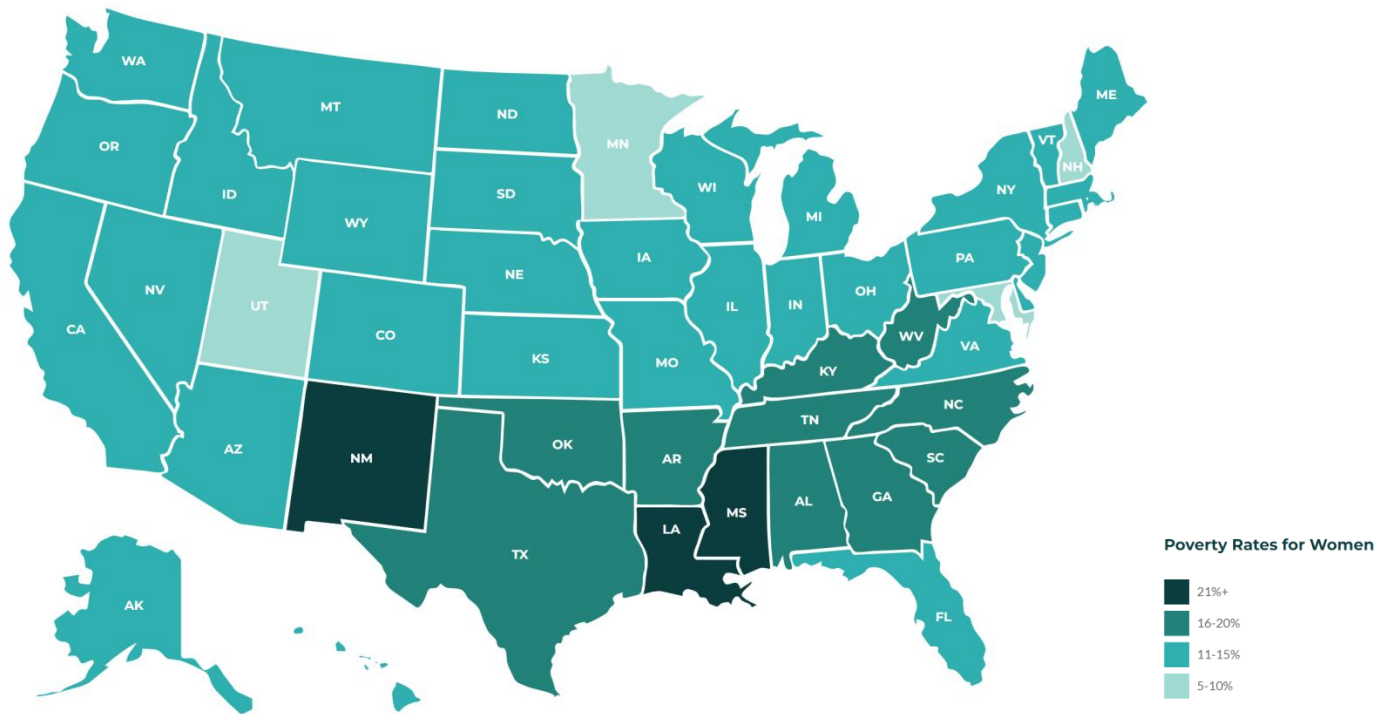


# THE STATE OF WOMEN'S ECONOMIC WELLBEING & THE LAW



## OVERVIEW

For over five decades, Legal Momentum has been at the forefront of advancing economic security for women across the United States. Despite many critical wins, we have not achieved the systemic change necessary to address the feminization of poverty and the overrepresentation of women among the most economically insecure.

Despite high workforce participation,<sup>1</sup> women's economic wellbeing is suffering, in large part due to longstanding and intersecting forms of discrimination, with women of color left the farthest behind. Not only are women paid less for doing the same work as men, women are segregated into many of the lowest-paid occupations, face steep financial penalties for pregnancy and caregiving, and face high rates of workplace violations.<sup>2</sup>

Women, especially women of color, disproportionately work demanding and difficult jobs with few or no benefits

### Key Takeaways:

- Women are significantly more likely (16% - 208%) to live in poverty than White men in every state. Poverty rates are especially stark for single mothers and women of color. In Mississippi and Louisiana, at least half of single mothers live in poverty.
- The gender earnings gap persists for women generally, but especially for women of color. Hispanic/Latina and/or American Indian/Alaska Native women in at least 12 states make on average half or less than half of what White men earn in those states.<sup>7</sup>
- Raising the minimum wage is critical particularly for women of color, who are overrepresented in the minimum wage and tipped wage workforce compared to White men. In D.C., women are 142% more likely to work a minimum wage job compared to White men and in many states Hispanic/Latina women are the most overrepresented in these jobs.

and at lower wages that do not meet the rising cost of living.<sup>3</sup> Meanwhile, they take on the bulk of child and family caregiving responsibilities without the supports necessary to build economic security for themselves and their families.<sup>4</sup>

Our discriminatory economic system, which devalues the essential work carried out predominantly by women, relies on women to power our economy while trapping them in cycles of financial precarity.<sup>5</sup> This financial precarity, in turn, drives and/or exacerbates a host of broader gender-based vulnerabilities, including gender-based violence and harassment, wage theft, trafficking, and other forms of exploitation.

Legal Momentum's clickable map, *The State of Women's Economic Wellbeing and the Law*, provides a snapshot of some of these gender and racial inequities at the national and state levels, alongside existing state pay protections. The map shows that women are at significantly greater risk of working poverty than White men<sup>6</sup> in every state, with some of the worst conditions in many Southern states.

The map serves as a tool for individuals, advocates, and lawmakers to assess how well states are addressing women's economic insecurity, to identify available state pay protections, and to build the case for broader structural reforms. By identifying widespread, often dramatic disparities based on gender and race, the map is intended to generate momentum for bold and concrete legislative and budgetary action to alleviate a longstanding underinvestment in women, particularly with respect to women of color.

### Key Takeaways (Continued):

- Most women (70%) are essential earners in their households (contributing at least 30 percent of household income), with Black women (78%) leading as essential earners. Their financial precarity drives intergenerational cycles of poverty and insecurity.
- Women fare the worst in many Southern states where labor and anti-discrimination protections are the weakest. Mississippi, for example, has the highest poverty rates for women in the country and is the only state that has failed to enact any of the pay protections tracked in the map.
- Even in the states with better figures for women, sizeable disparities persist for women of color or data sample sets are insufficient to accurately assess racial disparities. In Minnesota, for example, which has one of the lowest poverty rates for women, 29% of Black women live in poverty compared to 6% of White men.
- While states are making progress in the adoption of basic pay protections, with California leading, progress is slow, and these protections are only a baseline. All states demonstrate an underinvestment in women that requires comprehensive reforms to alleviate disproportionate gender- and race-based poverty rates and other gaps.

## WHAT IS COVERED IN THE MAP?

**The State of Women's Economic Wellbeing and the Law**, [www.womenswellbeingmap.org](http://www.womenswellbeingmap.org), is an interactive map that can be used to assess economic inequity for women and state progress to enact core pay protections. Each state page includes an **Economic Wellbeing Snapshot** tab with core data points on women's economic wellbeing and a **Legal Protections Snapshot** tab, which identifies whether core pay protections exist within each state.<sup>8</sup>

### *Economic Wellbeing Snapshot*

Today, women continue to face higher rates of poverty, pay discrimination, and segregation into lower-wage industries and jobs, particularly when compared to White men. To better assess these trends, each state page includes an Economic Wellbeing Snapshot, which provides federal and state-by-state data comparing women with White men, with breakdowns based on race, in these areas:

- Poverty rates for women
- Poverty rates for single mothers
- The gender earnings gap
- Women in the minimum wage workforce
- Women in the tipped wage workforce
- Women as essential earners

## Legal Protections Snapshot

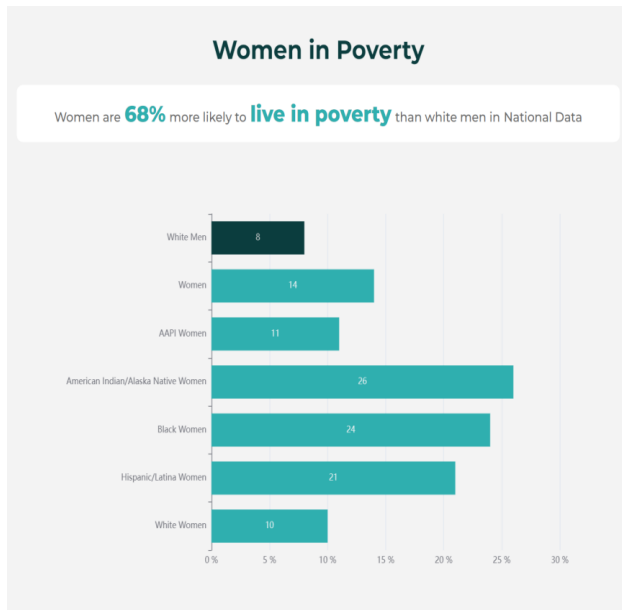
The existence of meaningful pay protections is essential to ensuring that women can address unjust and discriminatory pay practices. To assess state progress in this area, the Legal Protections Snapshot tracks whether states have enacted a range of core pay protections. Each snapshot provides basic information about applicable state laws with a **scorecard** tallying up the number of protections. Note that while the aim is to expand the conversation beyond standard equal pay laws (laws that typically require equal pay for equal, substantially similar, or comparable work) other relevant protections that do not directly involve pay practices, including paid family leave, sick time, and childcare, are not covered.

The Legal Protections Snapshot provides an overview of available federal and state laws in the following areas:

- Equal pay laws
- Pay transparency laws
- Minimum wage laws
- Tipped wage laws
- Overtime laws
- Wage notice and pay frequency laws
- Wage theft protections

## KEY TAKEAWAYS

### WOMEN IN POVERTY



#### HIGHEST POVERTY RATES FOR WOMEN

Mississippi (22%)

Louisiana (21%)

New Mexico (21%)

West Virginia (19%)

Kentucky (19%)

#### LOWEST POVERTY RATES FOR WOMEN

New Hampshire (8%)

Maryland (10%)

Utah (10%)

Minnesota (10%)

Hawaii (11%)

#### HIGHEST GENDER-BASED DISPARITY (COMPARED TO WHITE MEN)

Washington, DC (208%)

Texas (114%)

Mississippi (112%)

Connecticut (110%)

New Jersey (104%)

The figures in the Map, which are based on the U.S. federal poverty guidelines, capture alarming yet longstanding disparities that require bold and immediate attention.<sup>9</sup> Nationally, women are 68% more likely to live in poverty than White men, with the highest poverty rates among American Indian/Alaska Native Women, Black women, and Hispanic/Latina women.

Today, women are also more likely to live in poverty than White men in every state in the country. Our nation's capital, Washington, D.C., carries the most drastic gender-based disparities, with women 208% more likely to live in poverty than White men, followed by Texas (114%), Mississippi (112%), Connecticut (110%), and

New Jersey (104%). Poverty rates for women are highest in Mississippi (22%), Louisiana (21%), New Mexico (21%), West Virginia (19%), and Kentucky (19%).

The map shows that women are at significantly greater risk of working poverty in every state, with some of the worst conditions in many Southern states. The concentration of high rates of poverty and broader disparities for women of color, particularly Black women, in Southern states, is coupled with a glaring absence of anti-discrimination and labor protections alongside the persistence of antiquated Jim Crow-era policies like the tipped minimum wage. With the highest poverty rates for women, Mississippi is the only state in the country that has

failed to enact any of the eleven legal protections tracked in the map, and other Southern states like Louisiana and Kentucky similarly have enacted few worker-pay protection. Together, these trends highlight how the legacy of slavery in the region continues to result in the systemic exploitation of Black women’s labor.<sup>10</sup>

**Single Mothers:** Conditions are even worse for single women-led households across the country. In Mississippi (52%), Louisiana (50%), West Virginia (49%), Alabama (45%), and Kentucky (44%), more than half or nearly half of the single women with children in the state are

living in poverty. Maryland, Alaska, New Hampshire, and North Dakota are among the states with the lowest poverty rates for single mothers generally.

**Women of Color:** Nationally, and in every state across the country, women of color face appalling disparities. Among the lower ranking states like Louisiana, 33 % of Black women live in poverty compared to 10% of White men. Even in Minnesota, which has one of the lowest poverty rates for women, 29% of Black women live in poverty compared to 6% of White men.

## THE GENDER EARNINGS GAP



Nationally, if we take into account full-time and part-time year-round workers, women still make only 70 cents for every dollar a White man makes on average, and the figures for women of color drop drastically, with Hispanic/Latina women making 54 cents, Native American women making 56 cents, and Black women making 61 cents for every dollar a White man makes. In Texas, the state with the highest gender-based pay gap, women make 59 cents for every dollar a White man makes, and the figure drops to 44 cents for Hispanic/Latina women.

While disparities for women persist, disparities for women of color are drastically higher in many cases. Hispanic/Latina and/or American Indian/Alaska Native women in at least 12 states make half or less than half

### LARGEST WAGE GAPS FOR WOMEN (COMPARED WITH WHITE MEN)

Texas

Hawaii

Louisiana

California

New Mexico

### SMALLEST WAGE GAPS FOR WOMEN (COMPARED WITH WHITE MEN)

Maine

Vermont

South Dakota

Oregon

Delaware

of what White men make in their states. In California, Hispanic/Latina women make 42 cents for every dollar a White man makes. In New Mexico, American Indian/Alaska Native women make only 48 cents for every dollar made by a White man. Louisiana has the largest wage gap for Black women, with Black women making just over 50 cents for every dollar made by a White man.

Despite the fact that the majority of states have equal pay laws on the books and many states have been working to strengthen their equal pay laws, which typically prohibit pay disparities based on gender, these laws have been insufficient on their own to adequately eliminate disparities, particularly for women of color.

## WOMEN IN THE MINIMUM WAGE WORKFORCE



Today, the ongoing absence of adequate wage protections in the United States means that our economy relies upon exploiting the labor of a low-wage workforce comprised disproportionately of women of color. This wage policy not only perpetuates longstanding systems of gender and racial discrimination, it leaves a large population of workers struggling to make ends meet on wages that are drastically out of touch with the cost of living.

Nationally, the minimum wage has remained stagnant at \$7.25 an hour since 2009. People working full-time at the federal minimum wage earn approximately \$15,000 a year, which is insufficient to cover basic necessities in any state. Based on the Living Wage Institute's calculator, which estimates the living wage state by state, current minimum wage rates diverge significantly from what would be required for workers to cover the basic cost of living.<sup>11</sup>

While no state has set a minimum wage that matches the state's estimated living wage for single people or people with families, a growing number of states have raised the minimum wage and are taking inflation into account going forward (see Legislative Trends section).

Overall, women in all 50 states, plus D.C., were more likely to work minimum wage jobs than White men, with particularly concerning figures in certain states and jurisdictions.<sup>12</sup> Women in D.C. were 142% more likely to earn the minimum wage than White men, with Louisiana (102%), California (100%), Alaska (100%), and Texas (98%) demonstrating similar trends. The fact that women

### HIGHEST GENDER DISPARITIES IN MINIMUM WAGE WORKFORCE (COMPARED TO WHITE MEN)

**District of Columbia (142%)**

**Louisiana (102%)**

**California (100%)**

**Alaska (100%)**

**Texas (98%)**

in Washington, D.C. are 142% more likely to earn at or below the minimum wage than White men, when D.C. has one of the highest minimum wages in the country, highlights both how recent increases are particularly important for women but also that increases alone will not be enough to address the high rates of occupational segregation in the region.

States with the highest percentages of women in the minimum wage workforce, calculated based on the state's minimum wage, included Arkansas, Arizona, Florida, California, and Washington. In each of these states, the percentage of Black, Hispanic/Latina, and American Indian/Alaska Native women in the minimum wage workforce exceeds the percentage of White women in the minimum wage workforce. For instance, in California, 16% of White women earn at or below the California minimum wage, compared with 36% of Hispanic/Latina women.

In contrast, states with the lowest rates of women in the minimum wage workforce include New Hampshire, Wisconsin, Pennsylvania, North Dakota, and Minnesota. Despite the lower percentages of women working minimum wage jobs in these states, in all five states, the percentage of women of color in the minimum wage workforce drastically surpassed the percentage of White men. In New Hampshire, 10% of Hispanic/Latina women work in the minimum wage workforce compared to 5% of White men. In Wisconsin, 12% of both Black and Hispanic/Latina women work minimum wage jobs compared to 5% of White men. And in Minnesota, 16% of American Indian/Alaska Native women are in the



minimum wage workforce compared to 6% of White men. In many states, Hispanic/Latina women are overrepresented among minimum wage workers.

Seven out of the ten states with the lowest poverty rates have minimum wages above the federal level. Of these states, Minnesota, Colorado, New Jersey and Connecticut each index their minimum wage to inflation. In contrast, of the ten states with the highest poverty rates for

## WOMEN IN THE TIPPED WAGE WORKFORCE



The federal tipped wage is currently \$2.13 an hour, which means that employers in tipped industries like the restaurant industry can pay workers \$2.13 an hour with the expectation that with consumer tips the worker will earn at least the regular minimum wage of \$7.25. Tipped-based compensation schemes emerged as a way to underpay Black service workers after the abolition of slavery, and they continue to facilitate the exploitation of Black and Brown workers.<sup>13</sup> Today, many employers do not meet their obligation to make up the shortfall between what workers earn with tips and the minimum wage.<sup>14</sup> As a result, workers in these industries often face high rates of economic insecurity.

Unsurprisingly, women are overrepresented in tipped industries, where many women earn appallingly low wages, even after tips. As advocates have established, reliance on tips, coupled with economic insecurity, make women more susceptible to sexual harassment and other violations.<sup>15</sup> AAPI women, American Indian/Alaska Native Women, and Hispanic/Latina women are especially likely to work in tipped jobs compared with White women.

women, only four had minimum wages above the federal level. Louisiana and Mississippi, which have the highest poverty rates for women, do not have a state minimum wage—meaning the federal minimum wage of \$7.25 applies to most employees—and prohibit localities from increasing the minimum wage above the federal minimum.

### HIGHEST % OF WOMEN IN THE TIPPED WORKFORCE

**Nevada**

**Hawaii**

**Florida**

**New Mexico**

**Montana**

### LOWEST % OF WOMEN IN THE TIPPED WORKFORCE

**Washington, D.C.**

**New York**

**Iowa**

**Minnesota**

**Nebraska**

Women are more likely to work in the tipped workforce than White men in all 50 states, with the highest rates in the South. Women are 173% more likely than White men to work as tipped workers in D.C., followed by Alabama (103%), Louisiana (101%), Mississippi (96%), and Oklahoma (87%). Unsurprisingly, even larger disparities exist for women of color in these states. Notably in D.C., 17 percent of Hispanic/Latina women work in the tipped wage workforce compared to 3% of White men, reflecting similar disparities for Hispanic/Latina women in many states. In Louisiana, 30% of AAPI women work in the tipped wage workforce compared to 7% of White men.

Of note, however, is that D.C. is phasing out the tipped minimum wage. In contrast, many of the poorly performing Southern states retain a tipped wage of \$2.13/hour, contributing to economic insecurity for women in those states.

The five states with the highest rates of women in the tipped workforce are Nevada (27%), Hawaii (19%), Florida (14%), New Mexico (13%), and Montana (13%). Positively, Nevada and Montana do not maintain a separate, lower tipped minimum wage, and both Hawaii

and Florida have increased their tip minimum wages over the federal minimum of \$2.13, to \$12.75 and \$8.98, respectively. Notably, across Nevada, high percentages of women of color work in the tipped workforce,

including 38% of AAPI women and 37% of Hispanic/Latina women.

## WOMEN AS ESSENTIAL EARNERS



Across the country, women’s work is undervalued, yet women are relied upon to support their families, carry out essential roles, and to grow the economy. Nationally, 70% of women are essential earners—meaning they contribute at least 30% of household income.<sup>16</sup> Additionally, at least 70% of women are essential earners in their households in at least 36 states and Washington D.C., including the ten states with the highest poverty rates for women.

Black women are essential earners for their households even more frequently. Nationally, 78% of Black women are essential earners in their household, and in at least 11 states, over 80% of Black women are essential earners.

### HIGHEST % OF WOMEN AS ESSENTIAL EARNERS

Washington, D.C.

Arkansas

Mississippi

North Carolina

Vermont

### LOWEST % OF WOMEN AS ESSENTIAL EARNERS

Utah

Hawaii

Alaska

Idaho

Wyoming

Looking at the large proportion of women, particularly women of color, that are essential earners side by side with the disproportionate number of women, particularly women of color, that are living in poverty, demonstrates how our current economy exploits and undervalues women’s work, placing women of color and their children at particularly high risk of financial insecurity. This model, which has pushed women of color into undervalued and thus underpaid occupations without adequate supports not only hurts women, it creates substantial barriers for their children, driving generational cycles of poverty and insecurity.

## LEGISLATIVE TRENDS

To identify and assess state efforts to assess gender- and race-based inequities, the Map provides basic information for each state on available protections regarding pay equity, pay transparency, minimum and tipped wage laws, overtime laws, wage notice and frequency of pay requirements, and wage theft protections. Based on a review of practices across states, several trends were notable.

Overall, several states stand out as having few to no protections, including Mississippi, which ranked low on

### STATES WITH THE FEWEST PAY PROTECTIONS

Mississippi (0/11)

Georgia (1/11)

Louisiana (2/11)

Alabama (2/11)

South Carolina (2/11)

Texas (2/11)

Wyoming (2/11)

various economic indicators and has not enacted any of the pay protections tracked in the map. Note that while Mississippi did recently enact an equal pay law, it is more regressive than federal protections.

Alternatively, California surpasses all other states as the one state that has enacted laws in each of the eleven categories of protections, with Washington coming in a close second. The existence of fairly strong protections in California alongside ongoing disparities, especially for Hispanic/Latina women compared to White men, suggests that these protections are a baseline and more needs to be done to address gender and race-based disparities, particularly occupational segregation.

**Pay Equity:** While some states still have not enacted distinct pay equity laws or have enacted regressive laws, increasingly, states have passed laws making their equal pay laws more effective than the federal Equal Pay Act in three key ways. First, while the federal Equal Pay Act requires equal pay for “equal work”—an overly stringent standard—some states have adopted a broader standard for assessing pay equity that looks at “comparable” or “substantially similar” work.<sup>17</sup> Second, while the federal Equal Pay Act contains an overbroad exception, allowing wage differentials “based on any other factor other than sex,” many states have narrowed the affirmative defenses available to employers to make claims easier to bring.<sup>18</sup> Third, some states have expanded their equal pay laws to protected classes beyond sex such as race, ethnicity, sexual orientation, gender identity, age, religion, or disability. States with equal pay laws that encompass one or more of these additional protected classes include Alabama, California, Colorado, Hawaii, Iowa, Maine, Maryland, New Jersey, New York, Ohio, Oregon, Rhode Island, Vermont, and West Virginia.

To assert their rights under equal pay laws, employees must first learn about pay disparities. To facilitate disclosure, at least 21 states and Washington, D.C. have enacted laws prohibiting employers from banning discussions of wages or retaliating against an employee for discussing wages.<sup>19</sup>

Further, some states prohibit employers from asking about an applicant’s salary history or relying on salary history to determine pay. Historically, reliance on salary history in setting pay has perpetuated the gender and racial pay gap by carrying forward historic salary discrimination into future jobs. Eighteen states and Washington, D.C. have enacted salary history bans since 2016.

While many states have taken important steps to expand pay equity protections, other states have demonstrated a lack of commitment to addressing pay inequity. A handful of states still have not enacted distinct equal pay laws applicable to private employers, including Texas, Utah, Wisconsin, South Carolina, and North Carolina. Several states have enacted pay equity laws that are regressive and require urgent reform. For example, Wisconsin and Mississippi laws expressly allow employers to use salary history, and Wisconsin and Michigan prohibit municipalities from enacting salary history bans.

## STATES WITH THE MOST PAY PROTECTIONS

<b>California (11/11)</b>	<b>Colorado (9/10)</b>
<b>Washington (10/11)</b>	<b>Maryland (9/10)</b>
<b>Illinois (10/11)</b>	<b>Minnesota (9/10)</b>
<b>Hawaii (9/10)</b>	<b>New York (9/10)</b>
<b>Massachusetts (9/10)</b>	<b>Oregon (9/10)</b>
<b>Connecticut (9/10)</b>	<b>Vermont (9/10)</b>
<b>Rhode Island (9/10)</b>	

## STATES WITH SALARY HISTORY BANS

<b>Alabama</b>	<b>Massachusetts</b>
<b>California</b>	<b>Minnesota</b>
<b>Colorado</b>	<b>Nevada</b>
<b>Connecticut</b>	<b>New Jersey</b>
<b>Delaware</b>	<b>New York</b>
<b>Hawaii</b>	<b>Oregon</b>
<b>Illinois</b>	<b>Rhode Island</b>
<b>Maine</b>	<b>Vermont</b>
<b>Maryland</b>	<b>Washington</b>

## STATES WITHOUT DISTINCT EQUAL PAY LAWS OR WITH REGRESSIVE LAWS

<b>North Carolina</b>
<b>South Carolina</b>
<b>Texas</b>
<b>Utah</b>
<b>Wisconsin</b>
<b>Mississippi</b>



**Pay Transparency:** Efforts to dismantle pay secrecy have spread quickly, with many states enacting pay transparency laws that require employers to include a salary range in job postings. At least 10 states and Washington, D.C. have enacted pay transparency laws since 2019, including Colorado, New York, California, Washington, Maryland, Illinois, Massachusetts, Hawaii, Minnesota, and Vermont.<sup>20</sup> Recognizing that even the smallest employers can comply with this requirement, Colorado, Washington D.C., and Maryland, have adopted salary transparency laws applicable to all employers. In contrast, in Hawaii, salary transparency only applies to employers with 50 or more employees.

Additionally, three states—California, Illinois, and Massachusetts—recently adopted laws requiring larger employers to report on pay data by gender, race, and ethnicity to the state. These types of laws can provide enforcement agencies and the public with information on wage differentials across occupations and encourage employers to assess their own pay equity data.<sup>21</sup>

**Minimum and Tipped Wages:** Some states have in place minimum wage policies that are even more regressive than federal law, including Wyoming and Georgia, which maintain a state minimum wage below the federal minimum wage. Tennessee, South Carolina, Louisiana, Mississippi, and Alabama have no state minimum wage. This means that workers in these states that not covered under the federal Fair Labor Standards Act (FLSA) can be paid an even lower minimum wage or have no minimum wage protections.<sup>22</sup> Moreover, at least 18 states prohibit localities from setting a local minimum wage above the state minimum wage, including Alabama, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and Wisconsin.

Recognizing the insufficiency of federal minimum wage protections, other states are gradually acting to address the problem. Thirty states and Washington, D.C. have a minimum wage higher than the federal minimum of \$7.25. Additionally, at least 18 states (and D.C.), now adjust or “index” the minimum wage annually (or will in the future) to keep pace with inflation or the cost of living, including Alaska, Arizona, Colorado, Connecticut, Florida, Maine, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, Ohio, Oregon, South Dakota, Vermont, Virginia, Washington, and Washington D.C.

**STATES THAT HAVE ADOPTED PAY TRANSPARENCY IN JOB POSTINGS SINCE 2019**

<b>Colorado</b>	<b>Illinois</b>
<b>New York</b>	<b>Massachusetts</b>
<b>California</b>	<b>Hawaii</b>
<b>Washington</b>	<b>Minnesota</b>
<b>Maryland</b>	<b>Vermont</b>

**STATES WITH A MINIMUM WAGE AT OR BELOW THE FEDERAL MINIMUM (\$7.25)**

<b>Alabama</b>	<b>North Carolina</b>
<b>Georgia</b>	<b>North Dakota</b>
<b>Idaho</b>	<b>Oklahoma</b>
<b>Indiana</b>	<b>Pennsylvania</b>
<b>Iowa</b>	<b>South Carolina</b>
<b>Kansas</b>	<b>Tennessee</b>
<b>Kentucky</b>	<b>Texas</b>
<b>Louisiana</b>	<b>Utah</b>
<b>Mississippi</b>	<b>Wisconsin</b>
<b>New Hampshire</b>	<b>Wyoming</b>

**HIGHEST STATE MINIMUM WAGE**

<b>Washington, D.C. (\$17.50)</b>
<b>Washington (\$16.28)</b>
<b>California (\$16.00)</b>
<b>Connecticut (\$15.69)</b>
<b>New Jersey (\$15.13)</b>

A small but growing number of states have abandoned the tipped minimum wage, and instead require that tipped workers make the full minimum wage plus tips, including Washington, Oregon, California, Nevada, Minnesota, Montana, and Alaska. The tipped minimum wage is scheduled to be eliminated in the future in Washington, D.C. and Michigan.

## STATES THAT HAVE ELIMINATED THE TIPPED WAGE

Washington	Nevada
Oregon	Minnesota
California	Montana
	Alaska
D.C. (forthcoming)	
Michigan (forthcoming)	

In addition to requiring overtime pay when an employee works over 40 hours in one week, four states require daily overtime pay if an employee works over a specified number of hours in one day. These states include Alaska, California, and Nevada (8 hours) and Colorado (12 hours).

**Wage Notice, Frequency of Pay, and Wage Theft:** Most states require that employers pay employees at regular intervals, usually monthly or semi-monthly, and that employers provide workers with written notice of their pay. While these laws are often underused and many workers do not know about them, they can serve a vital role, particularly for lower-wage workers to identify when they have been underpaid or paid late.

Finally, all but three states (Alabama, Georgia, and Mississippi) have adopted state-level laws against wage theft, although the content of these laws and their on-the-ground effectiveness vary. Despite the widespread existence of wage theft prohibitions, lower-wage workers continue to experience high rates of wage theft,<sup>23</sup> raising questions about the need for broader protections, stronger enforcement, and increased worker and employer education about existing protections.

## RECOMMENDATIONS

Despite serving an essential role, the federal Equal Pay Act of 1963 and parallel state pay equity laws have failed to eliminate the persistent pay gap, particularly for women of color. This can be attributed to various factors, including the fact that laws often include very stringent standards that are difficult to meet, pay secrecy prevents many workers from using these laws because they are unaware when unlawful disparities exist, the laws require workers to take on costly litigation to correct a wrong, and the laws are not designed to address the broader problem of occupational segregation.

To address high rates of economic insecurity for women, we need to continue to improve our pay equity laws while expanding the conversation beyond pay equity to think about pay practices that address deeper structural inequities. Solutions must drive employer action and accountability without requiring some of the most vulnerable workers to bring costly litigation to obtain redress.

To address significant gaps in protection in a way that gets to the heart of women's economic insecurity, lawmakers must enact and invest in structural reforms that center economic growth around uplifting women instead of exploiting their unpaid labor. This requires critical reforms at the local, state, and federal levels to strengthen existing laws and enact more robust protections to address systemic inequities. Addressing the stark nature of overarching gender and racial inequities requires reforms that go far beyond our critical yet insufficient pay equity laws.

### Overview of Recommendations:

- Protect all workers
- Ensure all workers earn a living wage
- Value “women’s” work
- Establish an accurate poverty measure
- Build a care economy
- Budget to eliminate gender and racial discrimination
- Empower workers to organize
- Protect immigrant workers
- Remove barriers to local labor laws
- Advance pay transparency
- End reliance on salary history

**PROTECT ALL WORKERS:** All workers deserve to be protected under our laws and the failure to provide consistent protections perpetuates discriminatory exclusions while promoting labor exploitation by uncovered employers. Labor and anti-discrimination protections must cover all workers, including workers across all industries, workers for smaller employers, immigrants regardless of status, and gig workers.

**ENSURE ALL WORKERS EARN A LIVING WAGE:** To address the long-term structural impacts of gender and racial discrimination, lawmakers must raise the minimum wage with the goal of aligning it to the cost of living. Federal and state minimum wages should be adjusted or “indexed” annually to increase with inflation or cost of living. The tipped minimum wage, which breeds sexual harassment and undermines women’s economic security, should be eliminated. Moreover, states should adopt meaningful yet non-criminal protections against wage theft and eliminate policies and provisions that prohibit localities from enacting minimum wage increases. Alongside these critical reforms, policymakers should explore universal basic income models that ensure that all individuals can access the income to cover basic necessities.

**VALUE “WOMEN’S” WORK:** Women, who have long been tasked with unpaid care work at home, have been steered into care industries that are devalued because the work is considered women’s work. As such, women are overrepresented in childcare, home health care, restaurant work, and other industries where they carry out essential jobs where they are grossly underpaid. Similarly, women (particularly women of color) across industries continue to be segregated into the lowest paying roles within their industries. Lawmakers must take concrete steps to increase wages in these female-dominated, underpaid industries through budgetary investments and legislation, and they should conduct and incentivize employers to conduct job valuation studies of both public and private sector jobs to revisit how jobs are valued with a view towards eliminating occupational segregation.

**ESTABLISH AN ACCURATE POVERTY MEASURE:** Our official poverty measures at the federal, state and local levels are typically based on outdated calculations that fail to take into account the true cost of living, including geography, housing, and childcare costs.<sup>24</sup> The exclusion of childcare alone reflects the structurally discriminatory nature of these measure, which assign no monetary value to childcare because childcare is expected to be carried out by women unpaid. As a result, our poverty measures are inaccurate, and they exclude a large number of

people and families who cannot cover basic necessities. To ensure families have the supports they need, we need to start by establishing accurate measures to identify the full scope of people and families in need.

**BUILD A CARE ECONOMY:** Care work is essential to sustaining our economy and our communities and can no longer be treated as something with no monetary value to be carried out for little or no cost. In order to address systemic discrimination that has long undermined women and people of color, policymakers need to invest in sustainable care infrastructure at the local, state, and federal levels. Care workers should earn adequate wages for carrying out this difficult and important work and all families should have access to safe, affordable, and high-quality childcare through programs that build towards universal childcare. Considering the reality that families face, all workers should have access to paid time off and leave to cover illness, disability, safety needs,<sup>25</sup> family care, pregnancy, and the birth or adoption of a new child.

**BUDGET TO ELIMINATE GENDER & RACIAL DISCRIMINATION:** For too long policymakers have recognized the discriminatory nature of our economy, which sustains itself on unpaid or underpaid care work, while raising budgetary constraints when asked to address the problem. To meaningfully address systemic and racial discrimination, policymakers must center women of color in budgetary decision-making.

**EMPOWER WORKERS TO ORGANIZE:** Workers are their own best advocates, and they are better equipped to combat retaliation and power imbalances when they have the power to act together. Laws should ensure that all workers can engage in collective action free from retaliation.

**PROTECT IMMIGRANT WORKERS:** Immigrant women workers continue to be one of the most vulnerable groups of workers in the country. Based on their immigration status, limited English proficiency, economic insecurity, and gender, immigrant women are often relegated to the lowest paying jobs where they face high rates of sexual exploitation in the workplace, domestic violence that impacts the workplace, wage theft, trafficking, and other violations. The absence of sufficient workplace and anti-retaliation protections renders many immigrant workers powerless in the face of the worst abuses and enables employers to further exploit these populations. Policymakers should enact stronger anti-retaliation protections and reforms that prevent employers from exploiting immigrant labor and protect all workers who

bring forward complaints, regardless of immigration status.

**REMOVE BARRIERS TO LOCAL LABOR LAWS:** Often, important policies that advance equity for the most vulnerable workers first pass or gain early momentum at the local level.<sup>26</sup> These laws address local conditions and respond to local political will. Yet many states have enacted legislation prohibiting localities from setting a local minimum wage or enacting other local pay equity laws. Such laws result in the labor policy for cities with many low-wage workers of color being set by white-majority state legislatures.<sup>27</sup> Policymakers should repeal minimum-wage preemption and other state laws preempting local labor laws.

**ADVANCE PAY TRANSPARENCY:** Our persistent culture of pay secrecy allows employers to set pay behind closed doors where decision-making is regularly influenced by overt and unconscious gender and racial biases free from scrutiny. Meanwhile, workers do not have the basic information they need to assess whether

they are paid fairly or assert their rights under existing pay equity laws. To advance pay equity, policymakers should follow the lead of states and localities that require employers to adopt pay transparency practices, including mandated disclosure of compensation ranges in job postings and to current employees.<sup>28</sup> Pay transparency forces employers to be more thoughtful about their pay practices and empowers workers to assert their right to fair pay.

**END RELIANCE ON SALARY HISTORY:** Women and people of color continue to suffer from artificially depressed wages based on past discriminatory practices in salary setting. When employers ask or rely upon candidates' salary history, they perpetuate these discriminatory cycles, rewarding those who historically have been paid more while penalizing those who have been paid less, often based on unspoken biases. To disrupt these cycles, policymakers must follow the lead of states that prohibit employers from inquiring about or relying upon salary history in determining pay.

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**Data Compilation:** Stephen Stapleton

**Web Design:** Aaron Atkins

**Research Support:** Manatt, Phelps & Phillips, LLP.

**Lead Content Contributors:**

**Supporting Contributors:**

Kyra Batté  
Waleska Cabrera  
Seher Khawaja  
Maria McCabe  
Cassie Walter

Jennifer M. Becker  
Azaleea Carlea

## ENDNOTES

- <sup>1</sup> *Labor Force Status of Men and Women*, Women's Bureau, U.S. Dep't of Lab. (Aug. 2024), <https://www.dol.gov/agencies/wb/data/widget>.
- <sup>2</sup> Douglas Almond et al., *Large Motherhood Penalties in US Administrative Microdata*, 120 Proc. Nat'l Acad. Scis. e2209740120 (2023), <https://www.pnas.org/doi/abs/10.1073/pnas.2209740120>; *Sexual Harassment in Our National's Workplaces*, U.S. Equal Emp. Opportunity Comm'n (Apr. 2022), <https://www.eeoc.gov/data/sexual-harassment-our-nations-workplaces>; Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* 5 (2009), <https://www.nelp.org/app/uploads/2015/03/BrokenLawsReport2009.pdf>.
- <sup>3</sup> Ofonama Biu et al., *Urb. Inst., Job Quality and Race and Gender Equity* 23 (2023), <https://www.urban.org/sites/default/files/2023-09/Job-quality-and-race-and-gender-equity.pdf>.
- <sup>4</sup> *American Time Use Survey Summary*, U.S. Bureau of Lab. Stat. (June 27, 2024), <https://www.bls.gov/news.release/atus.nr0.htm>; see also Annette Jacoby et al., *Prosperity Now & Oxfam, Unseen Work, Unmet Needs: Exploring the Intersections of Gender, Race and Ethnicity in Unpaid Care Labor and Paid Labor in the US* 8-9 (2024), <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621617/rr-unseen-work-unmet-needs-250424-en.pdf>.

- <sup>5</sup> Jessica Mason & Katherine Gallagher Robbins, Nat'l P'ship for Women & Fams., *Women's Work is Undervalued, and It's Costing Us Billions* 3 (2023), <https://nationalpartnership.org/wp-content/uploads/2023/04/womens-work-is-undervalued.pdf>.
- <sup>6</sup> The data used and referenced in this Executive Summary and in the map cover non-Hispanic White men.
- <sup>7</sup> These states are California, Connecticut, Georgia, Hawaii, Nevada, New Jersey, New Mexico, North Carolina, Oklahoma, Rhode Island, Texas, and Utah.
- <sup>8</sup> Data for the map was compiled by Stephen Stapleton. For information on methodology, see methodology sections of the website at [www.womenswellbeingmap.org](http://www.womenswellbeingmap.org). The legal information in the Legal Protections tab was compiled by Legal Momentum. This information is not intended to provide legal advice and was last updated in August 2024.
- <sup>9</sup> While the figures in the map provide powerful evidence of widespread disparities, even these figures likely don't capture the full extent of the problem in light of the fact that many data sets are insufficient to accurately capture trends for women of color, particularly for American Indian/Alaska Native women, and that our national poverty measure is based on an antiquated formula that does not accurately capture the true cost of living. See Kalena Thomhave, *Rethinking the Poverty Measure*, Am. Prospect (Dec. 3, 2020), <https://prospect.org/day-one-agenda/rethinking-the-poverty-measure/>.
- <sup>10</sup> Chandra Childers, *The Evolution of the Southern Economic Development Strategy*, Econ. Pol'y Inst. (May 6, 2024), <https://www.epi.org/publication/rooted-racism-part1/>; Rebecca Dixon, *Reversing Labor Laws Rooted in Slavery*, Nat'l Emp. L. Project (June 17 2022), <https://www.nelp.org/reversing-labor-laws-rooted-in-slavery/>.
- <sup>11</sup> See *Living Wage Calculator*, Mass. Inst. of Tech., <https://livingwage.mit.edu/> (last visited August 26, 2024).
- <sup>12</sup> Note that figures captured in the map may fail to fully capture trends within the informal economy where workers tend to be undercounted in official surveys and where many are paid below minimum wage or experience high rates of wage theft.
- <sup>13</sup> Nina Mast, *Tipping is a Racist Relic and a Modern Tool of Economic Oppression in the South*, Econ. Pol'y Inst. (June 18, 2024), <https://www.epi.org/publication/rooted-racism-tipping/>.
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- <sup>15</sup> One Fair Wage et al., *The Tipping Point: How the Subminimum Wage Keeps Incomes Low and Harassment High* 2–3 (2021), [https://static1.squarespace.com/static/6374f6bf33b7675afa750d48/t/6478bd83b18a89504f4bdaf0/1685634436858/OFW\\_TheTippingPoint\\_3-1.pdf](https://static1.squarespace.com/static/6374f6bf33b7675afa750d48/t/6478bd83b18a89504f4bdaf0/1685634436858/OFW_TheTippingPoint_3-1.pdf).
- <sup>16</sup> For the purposes of compiling this data, Legal Momentum deviated from the traditional model that looks at “breadwinners” that often cover single mother heads of households irrespective of income and married mothers who contribute at least 40% of income. Instead, we looked at what we define as “essential earners” or single woman led households or married mothers who contribute at least 30% of household income.
- <sup>17</sup> States with this broader language include Arkansas, California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Kentucky, Maine, Maryland, Massachusetts, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Washington, and West Virginia.
- <sup>18</sup> Several states have amended their equal pay laws to limit this affirmative defense to a factor other than sex that job-related and consistent with business necessity, including Illinois, Maryland, New Jersey, New York, and Vermont. Other states have eliminated the “factor other than sex” catchall from their equal pay laws entirely, including Colorado, Maine, Massachusetts, and Oregon.
- <sup>19</sup> States/jurisdictions that have enacted laws prohibiting employers from banning discussions of wages or retaliating against an employee for discussing wages include California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.
- <sup>20</sup> Some other states require that employers disclose a salary range to an applicant upon request, but are not listed here.
- <sup>21</sup> Legal Momentum, Cmty. Servs. Soc'y, & PowHer N.Y., *The Next Step in the Fight for Wage Equity: Expanding Pay Transparency* 4, 7 (2024), <https://www.legalmomentum.org/library/next-step-fight-pay-equity-expanding-pay-transparency>.
- <sup>22</sup> The Fair Labor Standards Act applies to the majority of employees, including employees of employers with an annual dollar volume of sales or business of at least \$500,00, hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies; it additionally covers employees who are engaged in interstate commerce or in the production of goods for commerce, and many domestic workers. *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, U.S. Dep't of Lab. (July 2009), <https://www.dol.gov/agencies/whd/fact-sheets/14-flsa-coverage>.
- <sup>23</sup> David Cooper & Teresa Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year*, Econ. Pol'y Inst. (May 10, 2017), <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>.
- <sup>24</sup> See Areeba Haider & Justin Schweitzer, *The Poverty Line Matters, But It Isn't Capturing Everyone It Should*, Ctr. for Am. Progress (Mar. 5, 2020), <https://www.americanprogress.org/article/poverty-line-matters-isnt-capturing-everyone/>.
- <sup>25</sup> Safe Leave Working Grp., *The Need for Paid Safe Leave & Model Legislative Language* 3 (2024), <https://www.legalmomentum.org/library/need-paid-safe-leave-model-legislative-language>.
- <sup>26</sup> E.g. Yannet Lathrop, *The Fight for \$15: Past, Present, and Future*, Forge (April 14, 2021), <https://forgeorganizing.org/article/fight-15-past-present-and-future>; Jennifer A. Kingston, *Momentum Builds for Salary Transparency*, Axios (Jan. 28, 2022), <https://www.axios.com/2022/01/28/momentum-builds-for-salary-transparency>.
- <sup>27</sup> Olatunde C. A. Johnson, *The Future of Labor Localism in an Age of Preemption*, 74 Indus. Lab. Rels. Rev. 1179, 1189 (2021); Andrew Elmore, *Labor's New Localism*, 95 S. Cal. L. Rev. 253, 280-81 (2021).
- <sup>28</sup> Legal Momentum, *Transparency Pays: Guidance on Enacting Pay Transparency Legislation* 2-3 (2023), <https://www.legalmomentum.org/library/transparency-pays-guidance-enacting-pay-transparency-legislation>.