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# Verdict

January 7, 2014

Joanna L. Grossman

## Equality Still Elusive for Women in the Federal Workforce



In the 1983 movie *Nine to Five*, Dabney Coleman plays the perfect feminist foil. He's *that* boss. The one who propositions his secretary, takes credit for the work of his female subordinates, and never met a sex-based stereotype he didn't pick over the truth that is staring him in the face. Coleman's character, Mr. Hart, unleashes his sexism most intensely on three women at the office, played by famous stars Lily Tomlin, Jane Fonda, and Dolly Parton. Though the film is a farce, which revolves around the women's accidentally poisoning the boss and then kidnapping him to avoid the misperception of attempted murder, the movie hits on the most prevalent gender problems in the workplace.

The opening scenes show what's wrong with the workplace from a woman's perspective—it's definitely a man's world at their company—and the rest of the movie suggests how it might be fixed. During the period of time when Coleman is the women's prisoner and they run the office, the women implement changes like flex time, on-site childcare, and equal pay for equal work.

Thirty years later, aspects of this movie seem dated, to be sure: The hairstyles (ouch), the polyester, the casual and shameless nature in which Coleman spews hostility and misogyny under the guise of managing his employees. But if we peel back those layers, we might find that the same types of gender issues still exist in the American workplace. Less obvious, and less shocking, but very real barriers to equal opportunity nonetheless. Although some proclaim that the fight for gender equality has been won, all evidence is to the contrary. Federal anti-discrimination laws were central to opening the doors of the American workplace to women and to eradicating the most common and overt forms of sex discrimination that consigned women to traditional female (and lower-paying) jobs or excluded them from work altogether. But real questions still remain about what women find once they cross those thresholds and join the ranks of the working man. A [recent report](http://www.eeoc.gov/federal/reports/women_workgroup_report.cfm) ([http://www.eeoc.gov/federal/reports/women\\_workgroup\\_report.cfm](http://www.eeoc.gov/federal/reports/women_workgroup_report.cfm)) by the EEOC Women's Work Group on the experience of women in the federal workforce reminds us of the continuing struggles that working women endure.

### Gender and the Federal Workforce

In 2010, the Equal Employment Opportunity Commission (EEOC) convened a working group to “identify the obstacles that remain in the federal workplace that hinder equal employment opportunities for women.” The EEOC is broadly charged with implementing federal anti-discrimination laws in the workplace, including in both

the public and the private sector. Although federal employees have the same substantive protections as other employees, they are subjected to different procedural requirements for claiming them. There is thus a separate office within the EEOC to deal with the federal workforce, and it is this office that convened the working group as part of the EEOC's "overall mission to eradicate discrimination in both the federal sector and private sector workplace."

Given that the federal government is the nation's largest employer—employing nearly four-and-a-half million people—it makes sense to focus a bright light on the challenges that still face female employees. (By comparison, even Walmart, the nation's largest private sector employer, employs only 1.3 million people in the United States.) The Working Group gathered together federal EEO Directors, federal "affinity" groups like Federally Employed Women (FEW), non-federal advocacy groups, and a social scientist from Harvard. Together, these "dialogue partners" considered the most serious impediments to women's equality and came up with suggestions for eliminating them.

In broad brush, the Working Group found that while women have made significant advances in the federal workforce, they still experience inequality on a variety of fronts. The report highlighted six "obstacles" to equal opportunity, as follows:

- Inflexible workplace policies create challenges for women in the federal workforce with caregiver obligations;
- Higher-level and management positions remain harder to obtain for women;
- Women are underrepresented in science, technology, engineering, and mathematics fields in the federal workforce;
- Women and men do not earn the same average salary in the federal government;
- Unconscious gender biases and stereotypical perceptions about women still play a significant role in employment decisions in the federal sector; and
- There is a perception that federal Agencies lack commitment to achieving equal opportunities for women in the federal workplace.

## Women and Caregiving Responsibilities

The report documents the basis for each conclusion and the collateral consequences, and identifies proposals for change. For example, with respect to inflexible workplace policies, the report notes that while the number of women (and mothers) in the workplace has dramatically increased, their caregiving responsibilities have hardly changed at all—they are still the primary caregivers in most families. This leads to greater conflicts for women than for men between caregiving and work and, according to a GAO report from 2003, a greater chance for women of foregoing advancement or greater earnings in exchange for positions with more flexibility.

Inflexible workplace policies, the report concludes, lead to a variety of consequences, including dissatisfaction for female employees; dampened productivity, morale, and attendance; difficulty in the recruitment and retention of women; and leaves of absence while women tend to caregiving responsibilities that can hinder their ability to acquire necessary training and experience for advancement.

The report thus recommends that federal agencies should add flexibility to jobs, including flexible start and end times, job-sharing, telecommuting, and more generous leave and benefits. (For what it's worth, Lily Tomlin's character in *9 to 5* was a big advocate in the movie of job-sharing.) It also recommends that training and other measures should be undertaken to ensure that those who take advantage of flexible features should not be "penalized or stigmatized for doing so."

The problem of conflicts between caregiving responsibilities and work is not unique to the federal government. The EEOC has tried more broadly to tackle these issues with the adoption in recent years of an **enforcement guidance** (<http://eoc.gov/policy/docs/caregiving.html>) on caregiver discrimination, and a list of "best practices" (discussed [here](http://writ.news.findlaw.com/grossman/20090512.html) (<http://writ.news.findlaw.com/grossman/20090512.html>)) designed to eliminate the most common features of the workplace that disproportionately impact women with caregiving responsibilities. Likewise, many advocacy groups and academics have worked hard to bring attention to these issues and to propose model

workplace policies that would make for a more level playing field for women.

## **Women, Unequal Pay, and the Glass Ceiling**

The report also focuses attention on the problem of unequal pay and the difficulty that women have in ascending to the highest levels of management. Within the federal workforce, women comprise 43 percent of the workforce, but only 37% of GS-14 and GS-15 positions and only 30% of Senior Executive Service positions. The average grade for women is a full level below the average for men. And women are paid, on average, eleven cents less on the dollar.

Neither the pay gap, nor the glass ceiling, is unique to the federal government. Indeed, the problems seem to be worse in the private sector and common across all fields. The gender wage gap remains both stark and stagnant. Researchers disagree about the size of the wage gap, but not about its existence or significance. Most estimates hold that a woman, on average, earns less than 80 cents for every dollar a man earns. The wage gap is much larger for African-American women and Latina women, who earn even less than white women do, when compared with white men. Indeed, virtually every economist who has crunched the numbers, regardless of his or her ideological slant or background, has concluded that the gender wage gap is at least partially created by pay discrimination—which means paying women less to do the same job simply because they are women. (The problem of pay discrimination is discussed [here \(http://verdict.justia.com/2012/04/17/the-lady-in-red\)](http://verdict.justia.com/2012/04/17/the-lady-in-red).) Likewise, the glass ceiling is a real and documented reality in virtually every field, leading to a “pyramid” formation for women in many of them. (Women hold only 4.2 percent of CEO positions in Fortune 1000 companies.)

The Working Group report focuses on possible solutions to these problems in the federal workforce. It recommends specific measures to increase the availability and effectiveness of mentoring and networking. It encourages agency-by-agency self-audits to identify specific obstacles to women’s advancement. With respect to unequal pay, the report encourages better and more data collection about the particularized problems. It also encourages an amendment of the Equal Pay Act—one of the two statutes that can be used to combat unlawful pay discrimination—to allow for attorney’s fees and costs, the lack of which currently makes it difficult for discrimination victims to find lawyers.

Finally, and perhaps most importantly, the report concludes that “the federal government should take on the role as the Model Employer and implement a strategy to eliminate the gender pay gap among federal employees.” As the nation’s largest employer, the federal government should assume this role in all respects. Pay discrimination in many workplaces goes undetected because employees do not have access to the information that would reveal the disparities; and even when such disparities are detected by employees, employees face many obstacles in trying to enforce their substantive rights.

Moreover, there is nothing in anti-discrimination law that gives employers any incentive to take proactive measures to ensure equal pay. There’s no reward for implementing fair-pay practices when setting starting salaries, nor any for conducting self-audits that would reveal unintended, but discriminatory, pay patterns. To the contrary, looking for problems might set employers up for lawsuits, creating incentives not to do so. If the federal government were to make good on this recommendation, it would set an example for other, smaller employers that might make a real difference in pay equity.

## **Unconscious Bias and Reticence to Enforce Anti-Discrimination Norms**

The final two obstacles to equality that were identified in the Working Group report are (1) the persistence of unconscious gender bias and stereotyping, and (2) the perception by employees that federal agencies are not truly committed to equal employment opportunity. The report notes that “prejudiced actions are often the unconscious manifestation of mental processing and stereotypical associations,” which may result in management’s “viewing female applicants and current employees in predetermined ways.” One particular practice identified in the report is the “mini-me” syndrome, in which hiring employees are unknowingly in search of candidates with similar characteristics to their own. Unless the hiring employees are themselves diverse—recall the glass ceiling problem, however—this results in unequal opportunities at the hiring and promotion stages. The report recommends measures such as unconscious bias training—and the use of something called the Implicit

Association Test—to bring these biases to the conscious level and make those who are hiring employees more attuned to their own prejudices.

Evidence of a lack of commitment to equal opportunity included the failure by some agencies to fund EEO programs, failure to comply with existing regulations and directives, and the failure to hold agencies accountable when discrimination is proven. Although the problems identified were specific to the federal government, many other private-sector employees have a similar perception of their own employers, and feel that trying to enforce their rights against discrimination will be futile. For the federal workforce problems, the report suggests a variety of specific responses, including funding guarantees, audits to assess compliance, adequate punishment of offenders, and publicizing findings of discrimination. Other private sector employers would be wise to do their own self-audits and figure out how to clean up their own shops. The failure to do so, as we see in highly-publicized cases of discrimination and harassment, can be costly. (The costly mistakes problem is discussed [here](http://verdict.justia.com/2012/09/04/costly-mistakes) (<http://verdict.justia.com/2012/09/04/costly-mistakes>).

## Conclusion

The most important thing about this report is that it exists. All employers—particularly those employing millions of workers—should take stock of the role that gender continues to play in their workplaces. If we simply count heads—e.g., how many women are in the workforce, how many are the sole or primary breadwinner in the family—we might reach the mistaken conclusion that equality is damn near achieved. But the true state of gender equality turns not on whether women are hired, but whether they can succeed once they have been hired. This report suggests that we still have some distance to travel.



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