

3-1-2020

Shooting for Equality: The U.S. Women's National Team and Their Struggle for Equal Pay

Megan Musachio

Maurice A. Deane School of Law at Hofstra University

Follow this and additional works at: <https://scholarlycommons.law.hofstra.edu/jibl>



Part of the [Law Commons](#)

Recommended Citation

Musachio, Megan (2020) "Shooting for Equality: The U.S. Women's National Team and Their Struggle for Equal Pay," *Journal of International Business and Law*. Vol. 19: Iss. 2, Article 7.

Available at: <https://scholarlycommons.law.hofstra.edu/jibl/vol19/iss2/7>

This Notes & Student Works is brought to you for free and open access by Scholarship @ Hofstra Law. It has been accepted for inclusion in Journal of International Business and Law by an authorized editor of Scholarship @ Hofstra Law. For more information, please contact lawscholarlycommons@hofstra.edu.

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR EQUAL PAY

*Megan Musachio**

I. INTRODUCTION

For years, women have struggled to achieve equal pay for performing substantially the same work as men. Women have made great strides in terms of diminishing this gap, but have yet to achieve equality.¹ In 1963, President John F. Kennedy signed into law perhaps the most revolutionary piece of legislation regarding pay discrimination to date.² In the United States, the Equal Pay Act of 1963 prohibits gender-based discrimination in the work place when both employees are employed by the same organization.³ It also prohibits employers from awarding unequal wages or benefits to men and women working jobs that require “equal skill, effort, and responsibility, and which are performed under similar working conditions.”⁴ Most recently, the United States Women’s National Team (“USWNT”) has made waves by filing a lawsuit against the U.S. Soccer Federation (“USSF”) alleging a violation of the Equal Pay Act due to the stark differences between the base salaries of the men’s and women’s soccer national teams.⁵

Soccer, specifically tournaments including the World Cup and the Olympic Games, is an international spectacle. This great international presence emulates the fact that gender pay difference is not a U.S. specific problem, but plagues many international teams as well.⁶ Internationally, European countries have to comply with the Equal Pay for Equal Work

* I would like to dedicate this note to my dad for fostering my love of the game, and to my mom for always being my biggest fan.

¹ See Charlotte Alter, *Here's the History of the Battle for Equal Pay for American Women*, TIME (Apr. 14, 2015), <https://time.com/3774661/equal-pay-history/> (“Very few persons deny the justice of the principle that equal work should command equal pay without regard to the sex of the laborer, but it is one thing to acknowledge the right of a principle and quite another to practice it.”).

² *Equal Pay Act*, HISTORY (Apr. 2, 2019), <https://www.history.com/topics/womens-rights/equal-pay-act> [*hereinafter* Equal Pay Act: History].

³ See Equal Pay Act of 1963 29 U.S.C. §206(d).

⁴ *Id.* at §206(d)(1).

⁵ See Caitlin Murrery & Sam Morris, *Revealed: The \$730,000 gender pay gap in U.S. World Cup bonuses*, THE GUARDIAN (June 28, 2019), <https://www.theguardian.com/football/ng-interactive/2019/jun/28/revealed-the-731003-gender-pay-gap-in-us-world-cup-bonuses>. The USSF is the single, common employer of female and male professional soccer players who play on the United States Women’s National Team, as well as the United States Men’s National Team. The USSF pays the players’ salaries, along with a wide range of expenses. See generally Jonathan Tannenwald, *USWNT Sues U.S. Soccer Federation, Alleging Equal Pay Discrimination*, THE PHILADELPHIA INQUIRER (Mar. 8, 2019), <https://www.inquirer.com/soccer/uswnt-lawsuit-us-womens-soccer-team-gender-discrimination-20190308.html>.

⁶ See Robin Bairner, *How much do England's women footballers earn compared to England's men national team?*, GOAL (June 16, 2019), <https://www.goal.com/en-us/news/how-much-do-englands-women-footballers-earn-compared-to-englands-/1u48w0a2anyyb1ueymv8yn3dyu>.

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

Principle.⁷ This principle is relatively self-explanatory and is enforced throughout the European Union.⁸ However, British domestic law further imposes more specific obligations with respect to equal pay.⁹ In Britain, organizations must also comply with the Equality Act of 2010.¹⁰ However, England, a country well-known for its focus and influence on soccer, also experiences huge gaps between male and female athlete salaries.¹¹ On the other hand, recently, the Australia women's soccer team, as well as Norway, Iceland, and a small club team based in Lewes, UK, achieved equal base pay between the men's and women's soccer teams.¹² This is a huge leap for women.

In order to combat the problem faced by the United States Women's National Team, my proposed legal solution is for the United States to emulate the progress being made in Australia, as well as incorporate aspects of the plans set forth in Norway and Iceland, by establishing a baseline salary for both male and female athletes. While it may be impossible to control other income such as bonuses, advertisements, endorsements, etc., the USSF can control base salary. This would allow each team to begin on an equal playing field regarding tournament performance, with additional rewards coming in the form of advertisements and performance. Let the best team win.

While focusing on the massive pay disparity between male and female athletes in general, this note focuses specifically on professional soccer, and proposes a solution for these substantial wage gaps. While there have been numerous attempts, through legislation, to bridge the gender gap in the United States, these attempts have been unsuccessful. Predominantly, this note will evaluate and propose solutions advocating for the mirroring of international systems of payment in sport, specifically the systems utilized in Australia,¹³ Iceland,¹⁴ and Norway¹⁵ which have already implemented equal pay across genders.

Part II of this note begins with the legislative history of the numerous attempts for equal pay. Starting with the United States and the Equal Pay Act of 1963, this note then shifts to how this disparity is handled internationally by analyzing the Australian and British

⁷ See *The gender pay gap situation in the EU*, EUROPEAN COMMISSION (Oct. 29, 2019), https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu_en#whatisthegenderpaygap.

⁸ See *Europe – The gender pay gap – Equal pay*, EQUAL PAY PORTAL (Oct. 29, 2019), <https://www.equalpayportal.co.uk/europe/> (last updated Oct. 31, 2018).

⁹ *Id.*

¹⁰ See *An Introduction to the Equality Act*, EQUALITY AND HUMAN RIGHTS COMMISSION (Oct. 29, 2019), <https://www.equalityhumanrights.com/en/equality-act-2010/what-equality-act> (defining the Equality Act of 2010 as providing a framework to protect the rights of individuals and advance equality of opportunity for all. The main purpose is to provide Britain with a discrimination law that protects individuals from unfair treatment, thus promoting a fairer and equal society).

¹¹ See Bairner, *supra* note 6.

¹² See Ian Ransom, *Australia's women soccer players to get same base pay as men*, THOMAS REUTERS (June 7, 2019, 1:36AM), <https://www.reuters.com/article/us-soccer-australia-women/australias-women-soccer-players-to-get-same-base-pay-as-men-idUSKCN1T80DU>.

¹³ See *id.*

¹⁴ See *Equal Bonuses for Women's and Men's National Football Teams*, ICELAND REVIEW (Jan. 4, 2018), <https://www.icelandreview.com/news/equal-bonuses-womens-and-mens-national-football-teams/> [*hereinafter* ICELAND REVIEW].

¹⁵ See Aimee Lewis, *Norway's footballers sign historic equal pay agreement*, CNN SPORTS (Dec. 14, 2019, 10:16 AM), <https://www.cnn.com/2017/12/14/football/norway-football-equal-pay-agreement/index.html>.

legislative attempts. Part III conducts an investigation into the Australian National Team and explains its recent shift towards equal pay amongst the genders. Part IV details the progress that has been made in other European countries regarding equal base pay, focusing specifically on Norway and Iceland. Part V will compare the British National Team system with the United States National Teams, illustrating the similarities and differences between the two. Part VI will examine the United States Women's National team and its long battle for equal pay, starting from the formation of the team and ending with present day, following another historic FIFA World Cup win.

Part VII of this note details the financial aspect of the sport of soccer. While traditionally not thought of as the most popular sport in the United States, the U.S. National Teams are responsible for bringing in millions of dollars¹⁶ of revenue in advertisements. Part VIII explains how the United States Soccer Federation, the governing body of the sport in the United States, is in major violation of the Equal Pay Act due to its unwillingness to pay men and women the same salary for the same work. Finally, Part IX concludes with a proposed solution advocating that the U.S. National Teams operate more like the Australian, Norwegian, and Icelandic National teams by starting athletes at the same base pay, regardless of their gender, truly embodying the principle of equal pay for equal work.

II. EQUAL PAY ACT OF 1963: A BRIEF HISTORY

A. Females Enter into The Workplace

The Equal Pay Act ("EPA" or "The Act") was an effort to correct a centuries-old problem of gender-based wage discrimination.¹⁷ The EPA was passed as an amendment to the Fair Labor Standards Act, which mandated equal pay for equal work.¹⁸ The driving force behind the passing of The Act was an attempt to eliminate gender discrimination in the workplace.¹⁹ Traditionally, women were excluded from the workforce, making up only about eighteen percent of the labor force in the early 20th century.²⁰ Yet, as the country began to change, so did the workplace environment.²¹ Specifically, when the United States entered into WW2 in 1941, the need for women in the workplace drastically increased.²²

While at war, the country developed a newfound reliance on female workers, as they were necessary to keep the factories running in order to continuously produce war supplies.²³

¹⁶ See Theron Mohamed, *Nike is selling a record number of USA women's soccer jerseys thanks to World Cup fever*, MARKETS INSIDER (June 28, 2019), <https://markets.businessinsider.com/news/stocks/nike-sells-record-number-of-usa-soccer-jerseys-due-to-womens-world-cup-2019-6-1028317598>.

¹⁷ See Equal Pay Act: History, *supra* note 2.

¹⁸ See *id.* (Prohibiting employers from paying men and women different salaries or benefits when they were performing the same job, which required the same skills and responsibilities.).

¹⁹ See *id.*

²⁰ See Albert H Ross & Frank V. McDermott, Jr, *The Equal Pay Act of 1963: A Decade of Enforcement*, 16 B.C. INDUS. AND COMM. L. REV. 2 (1974).

²¹ *Id.* (In 1940, the number of women in the workplace rose to just over twenty-four percent).

²² *Id.* (With the entrance of the United States in World War Two, the number of women in the workplace began rising at a much more rapid pace. The percentage raised from twenty-four to thirty-two percent in just about twenty years).

²³ See *American Women in World War II*, HISTORY (Mar. 5, 2010), <https://www.history.com/topics/world-war-ii/american-women-in-world-war-ii-1> [*hereinafter* American Women in WWII].

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

Women especially filled the gaps in the munition factories and the airline industry,²⁴ accounting for 350,000 females in the armed forces.²⁵ In another step away from tradition, these females were married,²⁶ which was a drastic change from the customary attitude of married women, who traditionally served as wives and homemakers.²⁷ Even though women filled this country-wide need to continue production, equality in the workplace was short-lived.²⁸ During the war, equal pay was championed by labor unions and male workers alike.²⁹ However, as the war ended, so did the strides toward equal pay.³⁰

In an effort to combat this problem, Congress introduced the Women's Equal Pay Act, which would have made it illegal to pay women less than men for work of "comparable quality and quantity."³¹ However, the act unfortunately failed to pass.³² Ultimately, the phrase "comparable" opened the act up to speculation in terms of determining the worth and/or difficulty of the job.³³ The potential ambiguity of the term resulted in many heated debates, which contributed to the bill's ultimate failure.³⁴ Despite best efforts and campaigns by women in the 1950s, little progress was made and by 1960, women were still earning less than two-thirds of what their male counterparts were paid.³⁵ For example, the median wage for female sales workers was only 40.9 percent of the males' earnings, and female primary and secondary school teachers received only 75.6 percent of their male counterparts' total wages.³⁶ The fight for equal pay was ongoing, but it did not seem to be going anywhere.

B. The Emergence and Effects of the Equal Pay Act in the U.S.

By 1963, no real progress had been made concerning bridging the gap between male and female workers. When the horizon was looking grim for female employees, President John F. Kennedy's administration began changing things.³⁷ He started the Presidential Commission on the Status of Women, which was chaired by Eleanor Roosevelt.³⁸ The purpose of the

²⁴ See Alter, *supra* note 1.

²⁵ See American Women in WWII, *supra* note 23.

²⁶ See Ross & McDermott, *supra* note 20.

²⁷ See *id.*

²⁸ See Alter, *supra* note 1.

²⁹ See *id.* (Male employees desire for equal pay was driven on a much more personal, selfish ground. They feared that if women were paid less for the same work, then management would dilute their salaries when the men returned home from war).

³⁰ See *id.*

³¹ Equal Pay Act: History, *supra* note 2.

³² See *id.*

³³ See *Equal Pay Act of 1963*, NATIONAL PARK SERVICE (2016), <https://www.nps.gov/articles/equal-pay-act.htm#:~:text=Equal%20Pay%20Act%20of%201963,different%20salaries%20for%20similar%20work> (last updated Apr. 1, 2016).

³⁴ See *id.*

³⁵ See Equal Pay Act: History, *supra* note 2.

³⁶ See Economic Report of the President, March 2019. Washington: Government Printing Office, 2019 at 91, 104, Table 28 (For online reference see <https://www.whitehouse.gov/wp-content/uploads/2019/03/ERP-2019.pdf>).

³⁷ See Equal Pay Act: History, *supra* note 2.

³⁸ See *id.*

Presidential Commission on the Status of Women was to investigate questions concerning education, workplace, and legal equality for women.³⁹ The main focus of the committee was discrimination in the workplace, which resulted in numerous solutions being proposed.⁴⁰ Even though the commission failed to implement any substantial changes, it played a huge role in stimulating the discussion surrounding equal pay for women in the workplace.⁴¹

After its enactment in 1963, the EPA was not challenged in the courts until 1972 in the case of *Hodgson v. Corning Glass Works*.⁴² There, the court found Corning Glass Works to be in violation of the EPA for paying male night inspectors significantly more than female opening shift inspectors, even after the EPA went into effect.⁴³ Corning argued that shift differentials should be considered a “factor other than sex,” and thus an exception to The Act.⁴⁴ Factors other than sex include legitimate business-related differences in work responsibilities and qualifications for the particular positions at issue.⁴⁵ However, in *Corning*, the court disagreed and found that the “factors other than sex” exception didn’t apply.⁴⁶ The court considered “night work” not to be a factor other than sex and concluded that the increased compensation males received was an added payment based upon their gender, therefore violating The Act.⁴⁷

While passed in 1963, some employers are constantly struggling to comply with its effects, even to this day. For example, in a fairly recent case, *United States Equal Employment Opportunity Comm’n v. George Washington Univ.*,⁴⁸ this precise issue of equal payment amongst the genders in the workplace was the subject of litigation. In *United States Equal Employment Opportunity Comm’n*, the EEOC filed suit against the University for Sex Discrimination in violation of the Equal Pay Act.⁴⁹ The employee at the center of the litigation was Ms. Williams, who worked in the athletics department.⁵⁰ She was paid less, as an executive assistant, than Mr. Aresco was paid as Special Assistant. Compare the \$38,500-\$40,000 paid to Ms. Williams annually, with approximately \$77,500 paid to Mr. Aresco annually, prior to raises.⁵¹ Yet, the two had essentially the same job descriptions. For these reasons, the court held

³⁹ See Editors of Encyclopaedia Britannica, *President’s Commission on the Status of Women*, ENCYCLOPAEDIA BRITANNICA (Oct. 21, 2016), <https://www.britannica.com/topic/Presidents-Commission-on-the-Status-of-Women>.

⁴⁰ See *id.* (Solutions included affordable childcare, hiring practices promoting equal opportunity, paid maternity leave, etc.).

⁴¹ See *id.*

⁴² See *Hodgson v. Corning Glass Works*, 474 F.2d 226 (2d Cir. 1973).

⁴³ *Id.* at 234-35.

⁴⁴ *Id.* at 235; see also Fair Labor Standards Act of 1938, 29 U.S.C. §206(d)(1); see also Equal Pay Act of 1963, 29 U.S.C. §206(d)(1) (Other exceptions under The Act allowed pay differential based on a seniority system, a merit system, or a system which measures earnings by quantity or quality of production).

⁴⁵ See *Riser v. QEP Energy*, 776 F.3d 1191, 1198 (10th Cir. 2015); quoting *Aldrich v. Randolph Cent. Sch. Dist.*, 963 F.2d 520, 525 (2d Cir. 1992); see also *Brownlee v. Gay & Taylor, Inc.*, 642 F.Supp. 347, 353 (D.Kan.1985) (mere presentation of a formal salary classification system does not foreclose EPA claim).

⁴⁶ *Hodgson*, 474 F.2d at 226.

⁴⁷ *Id.* at 226, 233.

⁴⁸ *EEOC v. George Washington Univ.*, No. CV 17-1978, 2019 WL 2028398 (D.D.C. May 8, 2019).

⁴⁹ *Id.* at *1.

⁵⁰ *Id.*

⁵¹ *Id.* at *2.

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

that the University was in violation of the EPA.⁵² Therefore, while it is evident that there have been ebbs and flows in terms of establishing equal pay between the genders in the workplace, equality still remains a struggle for females.

C. Australia's Motto of "Equal Pay for Equal Work"

To better understand how the EPA compares to similar efforts globally, it is most helpful to start on the other side of the world. The commitment to equal pay in Australia began long before its counterparts in the United States such that "[t]he principle of equal pay for equal work was recognized in the Universal Declaration of Human Rights in 1948."⁵³ About twenty years later, in the revolutionary Equal Pay Case of 1969, women in Australia were granted equal pay with the court finally accepting and implementing the principle of equal pay for equal work.⁵⁴

The Equal Pay Case of 1969 was revolutionary for other reasons, being that it was a big win for the states in the battle of supremacy between federal and state governments.⁵⁵ The Equal Pay Case of 1969 consisted of a collection of claims and cases, decided in one decision, which analyzed the Commonwealth Conciliation and Arbitration Commission's (ACAC)⁵⁶ continued system of establishing different minimum wages for men and women, citing the existence of family wages.⁵⁷ At this time, a number of Australian states had recognized this discrepancy and began changing their laws accordingly.⁵⁸ Instead of increasing the basic minimum wage law, the states of New South Wales, South Australia, Western Australia, and Tasmania all passed virtually identical legislation awarding equal base pay between men and women.⁵⁹ This was a groundbreaking change which seriously caught the attention of the ACAC. The ACAC weighed the passing of this legislation heavily for it believed it "demonstrates . . . that there is a belief in this community that the concept of equal pay for equal work is a socially proper one."⁶⁰ Further, the federal legislature wanted to avoid any possible

⁵² *Id.*

⁵³ See Ruth Jost et al., *Equal Pay Handbook*, AUSTRALIA HUMAN RIGHTS COMMISSION (Nov. 18, 2019, 10:50 AM), https://www.humanrights.gov.au/sites/default/files/content/pdf/sex_discrim/equal_pay.pdf.

⁵⁴ (1969) 127 CAR 1142, 1156 (Austl.) (For online reference see https://www.fwc.gov.au/documents/documents/education/resources/1969_127_car_1142.pdf); see also *Equal Pay Case 1969*, FAIR WORK COMMISSION (Jan. 10, 2017), <https://www.fwc.gov.au/waltzing-matilda-and-the-sunshine-harvester-factory/historical-material/equal-pay-case-1969> (combining a variety of cases brought in the same year, the court found the wage relationship between males and females currently existing under Federal awards and determinations cannot be completely sustained on the grounds of logic or justice).

⁵⁵ See generally *id.*

⁵⁶ The Commonwealth Conciliation and Arbitration Commission is "[T]he first [Australian] federal tribunal to have jurisdiction over industrial matters. This court had both arbitral and judicial powers." This power allowed it to deal with all things concerns wages, employment, interstate disputes, etc. See Ross G. Elford, *Commonwealth Court of Conciliation and Arbitration*, AUSTRALIAN TRADE UNION ARCHIVES (Dec. 12, 2002), <http://www.atua.org.au/biogs/ALE1416b.htm> (however, in 1956, the Commission were subject to new amendments which separated the judicial and arbitral functions of the court).

⁵⁷ (1969) 127 CAR 1142, 1152 (Austl.) (explaining family wages as the outdated belief that men were legally responsible for taking care of their families financially, therefore their wages had to reflect this).

⁵⁸ *Id.* at 1151.

⁵⁹ *Id.* at 1153.

⁶⁰ *Id.*

discrepancies or complications with state law and saw the need to alter federal laws to run parallel with the state law.⁶¹ While acknowledging that equal pay is not only difficult to define, but difficult to implement, the ACAC viewed these solutions as “fair and reasonable,” thus adopting the state’s approach on a federal level.⁶²

However, this decision only affected minimum wage for female jobs that were exactly the same as jobs performed by men.⁶³ To remedy this, in 1972, the newly elected government lobbied the ACAC to reevaluate its decision to expand the holding beyond this.⁶⁴ In its effort to reevaluate their decision, the ACAC began to reassess female contribution in the workplace.⁶⁵ Its assessment focused on evaluating female unique contribution to the industry, rather than focusing on their resemblance to traditionally male roles.⁶⁶ These evaluations resulted in the present principle of “equal pay for work of equal value” which set the precedent in Australia allowing not only minimum wage, but all award rates, to be set without regard to the sex of the employee.⁶⁷ Nevertheless, women still earn less than men in Australia.⁶⁸ A variety of other factors came into play leading to an unintentional pay gap.⁶⁹ One of these factors is the evaluation of female-dominated jobs.⁷⁰ In these evaluations, which decide the pay rates to be awarded, evaluators greatly undervalued female-dominated careers.⁷¹ This led to lower pay rates being awarded to females,⁷² as well as the continuous reinforcement of clear “male” and “female” stereotype jobs, which furthered the pay gap.⁷³

Presently, the Australian government has a task force, the Workplace Gender and Equality Agency, which focuses on promoting and improving gender equality in Australian workplaces.⁷⁴ Created in 2012, as a result of Workplace Gender Equality Act,⁷⁵ the Workplace

⁶¹ See generally *id.* at 1147, 54-55.

⁶² *Id.* at 1157; see also *DEFINING MOMENTS: Equal pay for women*, NATIONAL MUSEUM AUSTRALIA (Nov. 18, 2019, 1:29 PM), <https://www.nma.gov.au/defining-moments/resources/equal-pay-for-women> [*hereinafter* *DEFINING MOMENTS*].

⁶³ See *DEFINING MOMENTS*, *supra* note 62.

⁶⁴ See *id.*

⁶⁵ See *id.*

⁶⁶ See *id.*

⁶⁷ See generally (1969) 127 CAR 1142, 1155-60 (Austl.).

⁶⁸ See Sinan Alnajjar & Ben Burke, *Spotlight on the gender pay gap in Australia*, BAKER MCKENZIE GENDER PAY GAP SERIES NO. 8, (Nov. 18, 2019, 11:37 AM), <https://www.bakermckenzie.com/-/media/files/insight/publications/2018/06/spotlight-on-the-gender-pay-gap-in-australia.pdf?la=en>.

⁶⁹ See Ruth Jost et al., *supra* note 53.

⁷⁰ *Id.* (The commission looked at ‘work value grounds,’ which sets the award rate, other than minimum wage, on the value of the work).

⁷¹ *Id.*

⁷² *Id.*

⁷³ See Leonora Risse, *50 Years After Australia’s Historic ‘Equal Pay’ Decision, The Legacy Of ‘Women’s Work’ Remains*, THE MOTLEY FOOL (Nov. 18, 2019, 11:07 AM), <https://www.fool.com/investing/2019/06/20/50-years-after-australias-historic-equal-pay-decis.aspx>.

⁷⁴ See Alnajjar & Burke, *supra* note 68 (The gender pay gap is defined as the difference between women’s and men’s average weekly full-time equivalent earnings, expressed as a percentage of men’s earnings. It is a measure of women’s overall position in the paid workforce and does not compare like roles).

⁷⁵ See *id.* (The Workplace Gender Equality Act is the primary legislation that specifically addresses the gender pay gap in Australia by establishing gender pay reporting requirements and aims to promote equality for both men and women in the workplace).

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

Gender and Equality Agency has made strides to lower the AUD 253.70 per week differential in earnings between male and female salaries.⁷⁶

D. Parliament, the Equal Pay Act of 1970, and the Equality Act of 2010

Taking a cue from its American counterparts, British parliament passed the Equal Pay Act of 1970 as a way to combat the pay disparity in England.⁷⁷ This act allowed an individual to be “entitled to a claim of equal pay when she or he, compared with an employee of the opposite sex, is employed in the same line of work, work rated as equivalent, or work of equal value.”⁷⁸ While this act was passed by Parliament in 1970, the act didn’t carry any real weight until 1975.⁷⁹ Similar to the U.S., more and more women in Britain were entering the workplace to fill a need; in Britain, women were needed to work at the Ford car-manufacturing plants.⁸⁰ While the women’s labor movement in the U.S. was focused on pay equality, the equality movement in Britain arose out of the desire to classify female work as skilled labor.⁸¹ By 1968, the women at the Ford factory were fed up and this resulted in a strike.⁸² Their main claim was that although they were performing the *exact* same work as men, female work was classified as unskilled labor, which resulted in receiving 15% less pay than men.⁸³ The Women’s Liberation Movement, inspired by the Ford Strikes, campaigned using ‘equal Pay for equal work’ as one of their main demands.⁸⁴ These strikes, combined with the efforts of the Women’s Liberation Movement, got the attention of Parliament, which resulted in the passing of the act.⁸⁵

While the Equal Pay Act remained British Law for almost 40 years, in 2010 the Equality Act was passed.⁸⁶ The Equality Act combined over one hundred pieces of legislation, including the Equal Pay Act of 1970, to form one cohesive law against discrimination.⁸⁷ The act requires that those who are doing equal work, receive the same rewards under their contracts of employment.⁸⁸ Similar to the “factor other than sex” exception in the U.S., under the Equality Act, employers also enjoy a similar protection.⁸⁹ In Britain, this defense is called ‘material

⁷⁶ See *id.*

⁷⁷ See *Equal Pay Act 1970*, CLOSE THE GAP (last updated May 2016), <https://www.closesthegap.org.uk/content/gap-law-1970/> [*hereinafter* Equal Pay Act 1970: Close the Gap].

⁷⁸ *Id.*

⁷⁹ See Dr. Polly Russel et al., *Equal Pay and Equality Legislation*, BRITISH LIBRARY (Mar. 8, 2013), <https://www.bl.uk/sisterhood/articles/equal-pay-and-equality-legislation>.

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² See *id.*

⁸³ See *id.*

⁸⁴ See *id.*

⁸⁵ See *id.*

⁸⁶ See Equal Pay Act 1970: Close the Gap, *supra* note 77.

⁸⁷ See *id.*

⁸⁸ See *What equality law means for you as an employer: pay and benefits*, Equality Act 2010 Guidance for employers, EQUALITY AND HUMAN RIGHTS COMMISSION at 24 (Jan. 2011), https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_you_as_an_employer_-_pay_and_benefits.pdf (last updated Apr. 2014).

⁸⁹ See *id.* at 41.

factor deference,' such as qualifications, geographical differences, and night work.⁹⁰ The Equality Act is still good law today and all employers, including employers of athletes, must abide by it.

III. AUSTRALIA'S INTERNATIONAL SOCCER TEAMS: A STEP TOWARDS FIXING THE GENDER-BASED PAY GAP

A. The Australian National Team Sets the New Precedent

The Australian Women's National Team has made huge strides in terms of equal pay.⁹¹ Recently, Australian soccer's governing body, the Football Federation Australia, came to an agreement with its two national teams to eliminate the pay gap between male and female soccer athletes.⁹² The Caltex Socceroos, the mens national team, and the Westfield Matildas, the women's national team, will now receive "equal shares of total player revenue as part of a four-year deal between the Football Federation Australia and the union, Professional Footballers Australia."⁹³ This deal not only sets equal base pay for both male and female athletes,⁹⁴ it also allows players to receive 40% of the prize money for qualifying for the FIFA World Cup, which is a 10% increase.⁹⁵ Additionally, this percentage will raise another 10%, to 50%, if the teams advance past the knockout stage.⁹⁶ The deal not only focuses on wage disparities, it also aims at bridging the gap between other inconsistencies between the mens and women's team such as travel perks.⁹⁷ Females will now have access to business-class international travel, just as the men do.⁹⁸

The agreement came as a result of protests involving lack of gender parity between male and female athletes.⁹⁹ Further, the Football Federation Australia views the deal as a step in the right direction, illustrating its determination to "address issues of gender equity in all facets of the game and build a sustainable financial model."¹⁰⁰ Starting with their new contract, female Australian athletes will have the same base hourly rate matching the men's side.¹⁰¹ Praised as a "moment in time that players should be proud of,"¹⁰² Australia has solidified its

⁹⁰ See *id.* at 30.

⁹¹ See Ransom, *supra* note 12.

⁹² See Karen Zraick, *Australian Women and Men's Soccer Teams Reach Deal to Close Pay Gap*, THE NEW YORK TIMES (Nov. 6, 2019), <https://www.nytimes.com/2019/11/06/sports/soccer/australia-soccer-matildas-equal-pay.html> (last updated Nov. 8, 2019).

⁹³ *Id.*

⁹⁴ See Ransom, *supra* note 12.

⁹⁵ See Christopher Brito, *Australian women's soccer team get equal pay in historic deal*, CBS NEWS (Nov. 6, 2019, 3:04 PM), <https://www.cbsnews.com/news/australia-womens-national-soccer-team-westfield-matildas-football-caltex-socceroos-uswnt/>.

⁹⁶ See *id.*

⁹⁷ See Agence France-Presse, *Australia's Male, Female Footballers to Get Equal Pay*, VOA NEWS (Nov. 6, 2019, 11:31 AM), <https://www.voanews.com/arts-culture/australias-male-female-footballers-get-equal-pay>.

⁹⁸ See *id.*

⁹⁹ See Zraick, *supra* note 92.

¹⁰⁰ See *id.*

¹⁰¹ See Ransom, *supra* note 12.

¹⁰² *Id.*

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

spot as a global leader in championing equal pay for female athletes.¹⁰³ The two gendered teams, similar to those in the U.S., compete in the same tournaments, but here the Australian National Team is truly personifying the words of the Equal Pay Act; “same base pay for same base work.”¹⁰⁴ As part of the new deal, the men’s and women’s teams will receive a 24 percent share of national team revenue, with that number rising one percent each year.¹⁰⁵ This rewards athletes for their performances in the tournament, rather than their gender.¹⁰⁶

B. Not a Perfect System, but a Massive Leap in the Right Direction

While the pay gap still exists, this is a huge step forward for female athletes. It is impossible to control the bonuses and the added income players get from sponsorships, but starting the players on an equal playing field is a huge step forward for equality.¹⁰⁷ However, this system still has its flaws. Equal pay based on an hourly rate will only ever truly be equal if the hours are the same, however this will not be the situation in Australia.¹⁰⁸ For instance, the women’s season is much shorter, lasting for only 14 weeks.¹⁰⁹ In contrast, the men’s season runs for about 27 weeks, thus allowing them to ultimately make more money in the end.¹¹⁰ Nevertheless, the spotlight the Australian teams have put on pay disparity is visible throughout the world and it is urging FIFA to follow suit by rewarding their male and female athletes equally.¹¹¹ In an effort to further ensure equality and the future of the sport, the players in Australian have pledged to commit five percent of their earnings back into Australian youth national teams.¹¹² Not only does this allow the players to give back to the soccer community which developed their love for the sport, but it also allows a minimum level of investment for future generations to allow the continuation of equal pay.¹¹³

C. Same Base Pay Achieved, Despite Females Bringing in Less Money Per Game

Further illustrating its commitment towards equal pay, Football Federation Australia awarded its male and female athletes equal base pay, despite the men bringing in more money

¹⁰³ See *id.*

¹⁰⁴ AFP, *Australian female footballers to earn same base pay as men*, NEW STRAITS TIMES (June 7, 2019), <https://www.nst.com.my/sports/football/2019/06/494481/australian-female-footballers-earn-same-base-pay-men>

¹⁰⁵ See Agence France-Presse, *supra* note 97.

¹⁰⁶ See *id.*

¹⁰⁷ See Reality Check team, *Women’s World Cup: What is the pay gap?*, BBC NEWS (July 8, 2019), <https://www.bbc.com/news/world-48530498>.

¹⁰⁸ See AFP, *supra* note 104.

¹⁰⁹ See Ransom, *supra* note 12.

¹¹⁰ See *id.*

¹¹¹ See Reality Check team, *supra* note 107.

¹¹² See Agence France-Presse, *supra* note 97.

¹¹³ See *id.*

per game.¹¹⁴ Even though the Matildas significantly outperform their male counterparts,¹¹⁵ the Socceroos earned a bigger slice of commercial revenues than the women's team.¹¹⁶ While exact comparison is sometimes difficult, due to the differences in match fees, allowances, bonuses, retainers, etc., an estimate is still plausible. When playing against an international team, the match fee a male player receives is over \$5,000.¹¹⁷ Comparatively, a female athlete will get paid around \$500.¹¹⁸ However, the new legislation in Australia plans to change this.¹¹⁹ In addition to equal base pay and increased winning percentages, female Australian athletes will also get additional, non-salary related perks.¹²⁰ Football Federation Australia chairman Chris Nikou further voiced his support for this agreement saying, "[F]ootball is the game for everyone, and this new collective bargaining agreement is another huge step toward ensuring that we live the values of equality, inclusivity, and opportunity."¹²¹

IV. OTHER EUROPEAN COUNTRIES MAKE STRIDES IN CLOSING THE GENDER ORIENTED PAY GAP

A. Norway's Shift to Equal Pay

Differing slightly from Britain and Australia, Norway made headlines when, in October 2017, it announced that the national women's team would earn the same as their male counterparts. The agreement awarded females a pay raise of 2.5 million Norwegian Kroner (\$302,750) coming in 2018, while also giving both national teams a raise within the next year.¹²² Prior to this deal, women earned more than 400,000 euros less than their male counterparts, despite consistently outperforming them.¹²³ The difference here is that the Norwegian Football Association, in conjunction with the Norway Player Association, took 550,000 kroner typically awarded to the Norwegian Mens National Team and instead awarded it to the female national team.¹²⁴ When asked about this decision, Norway men's team captain, Stefan Johansen, said, "[T]he women's national team was as important as the men's. It was not difficult to say yes to give away some of the commercial bonus[es]."¹²⁵ This is a monumental

¹¹⁴ See Nick Evershed, *How much are Australia's male and female sports teams paid*, THE GUARDIAN (Sept. 14, 2015), <https://www.theguardian.com/news/datablog/2015/sep/15/how-much-are-australias-male-and-female-sports-teams-paid>.

¹¹⁵ See Zraick, *supra* note 92.

¹¹⁶ See Evershed, *supra* note 114.

¹¹⁷ See *id.*

¹¹⁸ See *id.*

¹¹⁹ See *id.*

¹²⁰ See *id.* (perks include access to business class international travel, a higher level of support during pregnancy, as well as an increased level of funding to provide for well-being and support to all national team members).

¹²¹ *Id.*

¹²² See Lewis, *supra* note 15.

¹²³ See Samuel Lovett, *Norway's Male and Female Footballers Sign Historical Equal-Pay Agreement*, INDEPENDENT (Dec. 15, 2017, 12:11 PM), <https://www.independent.co.uk/sport/football/international/norway-footballers-equal-pay-agreement-a8112016.html>.

¹²⁴ See Lewis, *supra* note 15.

¹²⁵ *Id.*

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

validation of women's soccer in Norway, which wasn't even formally recognized by the Norwegian Football Association until 1976.¹²⁶

Therefore, beginning in 2018, the Norwegian women's team will be earning the exact same amount per year as the men's team.¹²⁷ While historic in its commitment to equal salary, the Norwegian deal does not interfere with bonus amounts that come with performance in the FIFA World Cup.¹²⁸ Even though the bonuses have been described as "equitable," not "equal," both gendered teams will receive, in bonuses, 25% of what the Norwegian Football Association earns from FIFA based on performance.¹²⁹ While no system is perfect, by allocating the bonuses on an evenly set percentage for both gendered teams, the Norwegian Football Association is attempting to combat the pay disparity in all its forms; their focus isn't solely on salary.¹³⁰

B. Iceland: The Best Place to Be a Woman

Iceland has been named the most gender equal country for the past 10 years and running.¹³¹ However, similar to the United States, as well as numerous other countries, the struggle for equal pay in Iceland has been going on since 1975.¹³² In an effort to get men to respect them in what they were doing, women all over Iceland went on strike and refused to work; this resulted in no cooking, cleaning, or looking after the children on October 24, 1975.¹³³ Fast forward to 2018 and the women of 1975 would be gratified in knowing that "Iceland became the first country in the world to make companies prove they are not paying women less than men for the same work."¹³⁴ The new act requires public and private organizations, employing more than 25 people, to comply with equal pay within four years or face daily fines.¹³⁵ The standard is simple enough on its face: eliminate factors that are irrelevant by the law.¹³⁶ Not only proposed as eliminating the pay differences between gender, but the new

¹²⁶ See *id.*

¹²⁷ See *id.*

¹²⁸ See Grant Wahl, *What FIFA and the Rest of the World Can Learn from Norway's Equitable Pay Agreement*, SPORTS ILLUSTRATED (Oct. 8, 2017), <https://www.si.com/soccer/2017/10/08/fifa-women-soccer-equal-pay-norway-gianni-infantino>.

¹²⁹ See *id.*

¹³⁰ See *id.*

¹³¹ See Sara Björk Gunnarsdóttir, *I'm a professional footballer and I've seen first hand the impact of making women visible in sport*, THE I PAPER (Mar. 19, 2019, 4:17 PM), <https://inews.co.uk/opinion/comment/i-play-football-for-icelands-womens-team-and-im-paid-equally-to-men-it-changed-my-life-505240> (last updated Mar. 20, 2019, 5:17PM).

¹³² See Sif Sigmarsdóttir, *Once more, Iceland has shown it is the best place in the world to be female*, THE GUARDIAN (Jan. 5, 2018, 10:43 AM), <https://www.theguardian.com/commentisfree/2018/jan/05/iceland-female-women-equal-pay-gender-equality>.

¹³³ See *id.* (Known as "women's day off," this date is seen as a defining moment in Iceland's gender equality struggle. 90% of women stopped performing household chores, which forced shops, factories, and theatres to close because men were left with no choice but to take care of the children. Women's day off has been hailed by a former Icelandic president as, "[T]he first step for women's emancipation in Iceland. It completely paralyzed the country and opened the eyes of many men.").

¹³⁴ *Id.*

¹³⁵ See *id.*

¹³⁶ See *id.*

Icelandic system can be used to eliminate discrimination by race and/or disability.¹³⁷ While acknowledging that this will not eliminate the pay gap overnight, many are praising Iceland for its revolutionary step in the right direction.¹³⁸

i. Iceland Soccer Teams Achieve Equal Bonuses

In a recent decision, the Football Association of Iceland, the KSÍ, determined that the women's national team will receive the same bonuses, based on performance, as the men's team in order to "further equality within the sport."¹³⁹ The president of KSÍ, Guðni Bergsson, championed the decision by saying, "It is a step which all the board agreed upon. We believe it is a progressive move. We aim to be progressive and decided to take action. . . . [N]orway has already taken the step. We thought it was time for this move as well encouraging Icelandic football."¹⁴⁰ Similar to the success of the USWNT, which will be discussed further below, the Women's Icelandic National Team has also been successful in recent years.¹⁴¹ It is currently ranked 19th in the world according to FIFA, beat the German national team in the World Cup qualifying rounds, and qualified for the last three European Championships, which is substantially more than the men's side.¹⁴²

Sara Björk Gunnarsdóttir, the Iceland's Women's captain, credits the KSÍ as still being the leading organization giving the attention and respect to the women's game it deserves.¹⁴³ In the game against Germany, the Icelandic women's national team sold out the national stadium allowing thousands of fans to attend the game.¹⁴⁴ Additionally, the national broadcaster in Iceland, RÚV, has established an equity policy which ensures male and female sports are covered equally.¹⁴⁵ While male and female athletes in Iceland still face disparities, the gap is becoming smaller and smaller.

V. INEQUALITY WITHIN ENGLISH NATIONAL TEAM MEMBERS FALLS PRIVY TO THE SAME DISPARITIES AS THE UNITED STATES NATIONAL TEAM MEMBERS

England National Team players are paid by the same parent organization, the Football Association ("FA").¹⁴⁶ The FA is the English equivalent of the USSF.¹⁴⁷ English national team players earn an average of £25,000 per year, with an additional £5,000 available through

¹³⁷ See *id.*

¹³⁸ See *id.*

¹³⁹ See ICELAND REVIEW, *supra* note 14.

¹⁴⁰ *Id.*

¹⁴¹ See *id.*

¹⁴² See *id.*

¹⁴³ See Gunnarsdóttir, *supra* note 131.

¹⁴⁴ See *id.*

¹⁴⁵ See *id.*

¹⁴⁶ See Georgina Laud, *World Cup 2018 England earnings: How much do England players get paid?*, Express (June, 28, 2018, 6:21PM), <https://www.express.co.uk/sport/football/981119/world-cup-2018-England-vs-Belgium-England-players-salaries>; see also *TheFa: What We Do*, THE FOOTBALL ASSOCIATION, <http://www.thefa.com/about-football-association/what-we-do>.

¹⁴⁷ Both organizations are the overseeing bodies of their respective country's national teams.

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

bonuses.¹⁴⁸ Across the FA, the bonuses received by male athletes were 35.2% higher than what was received by women.¹⁴⁹ Additionally, there still exists an hourly pay gap of 8% between male and female athletes.¹⁵⁰

The main difference between the men's and women's teams in England, as compared to the U.S., is the strength of each team and overall popularity.¹⁵¹ Female soccer athletes in England don't have the same public draw as the men's teams do and often there are empty seats at their games.¹⁵² Additionally, in the most recent FIFA World Cup, only 6.9 million people tuned in to watch the women play.¹⁵³ This number, while record breaking for the women's side, dwarfs in comparison to the audience that watches the men play.¹⁵⁴ In a stark comparison, the men's world cup totaled about 26.5 million viewers who tuned in to watch the English Men's National team; this is more than triple the amount watching the women's game.¹⁵⁵ In England, the men are outperforming the women and their bonus structures reflect this.¹⁵⁶

However, these underlying reasons are vastly different than what is going on in the United States.¹⁵⁷ The USWNT is drastically outperforming the men, yet the men are still getting paid more in bonuses.¹⁵⁸ Additionally, the women in the U.S. are bringing in more revenue per game than their male counterparts, unlike the situation in England.¹⁵⁹ As mentioned below, the USWNT has gone further in more national tournaments in recent years than their male counterparts.¹⁶⁰ In contrast, the men's team in England has achieved more success.¹⁶¹ In England, they are paying the more successful team more money, yet in the United States, this logic is not being followed.

A. A Club Team in England Adopts the Australian Precedent of "Equal Pay for Equal Work"

¹⁴⁸ Bairner, *supra* note 6.

¹⁴⁹ The Football Association Gender Pay Report 2018, file:///C:/Users/jbodo/Downloads/the-fa-gender-pay-gap-report.pdf; *see also* FA Staff, *THE FA REDUCES MEAN HOURLY GENDER PAY GAP BY 5%*, THE FOOTBALL ASSOCIATION (Mar. 28, 2019), <http://www.thefa.com/news/2019/mar/28/2018-gender-pay-gap>.

¹⁵⁰ *See id.*

¹⁵¹ *See* Suzanne Wrack, *Toni Duggan: 'I believe we should be better paid, but not the same as the men'*, THE GUARDIAN (June 5, 2019), <https://www.theguardian.com/football/2019/jun/05/toni-duggan-equality-football-england-barcelona-womens-world-cup>.

¹⁵² *See id.*

¹⁵³ *See* Alice Evans, *FIFA's Women's World Cup: Five ways women's football beats men's*, BBC NEWS (June 25, 2019), <https://www.bbc.com/news/uk-48742850>.

¹⁵⁴ *See id.*

¹⁵⁵ *See id.*

¹⁵⁶ *See* Wrack, *supra* note 151.

¹⁵⁷ *See id.*

¹⁵⁸ *See id.*

¹⁵⁹ *See* Evans, *supra* note 153 (Ticket prices for an English Men's National Team game during the 2018 World Cup went for around £824.44. However, ticket prices for an English Women's National Team game during the 2019 world cup went for around £84).

¹⁶⁰ *See generally* *U.S. Soccer Reaching New Heights*, U.S. SOCCER (2019), <https://www.ussoccer.com/about> [*hereinafter* *U.S. Soccer Reaching New Heights*].

¹⁶¹ *See* Evans, *supra* note 153.

Recently, a small soccer club in Lewes, England became the first professional or semi-professional football club to pay its women's and men's teams the same.¹⁶² This groundbreaking initiative was passed as part of its Equality FC campaign.¹⁶³ This small club is striving to set a precedent that will hopefully be followed across the entire UK, and eventually all throughout the sport of soccer.¹⁶⁴ With funds provided through sponsors and donors, Lewes FC has provided equal resources in terms of coaching, training, team facilities, etc.¹⁶⁵ The club's mission is to demonstrate that equal pay and successfully run programs are not mutually exclusive, but instead go hand in hand.¹⁶⁶ Per the manager of the Lewes women's team, John Donoghue, the benefit of "female players have[ing] the same rewards as their male counterparts for doing the same job is a fantastic leap forward for women's football. This sends a powerful signal to not only our players and our club, but to the whole UK football community that women's football deserves an equal voice and support to men's."¹⁶⁷ Not only is this a huge step forward in terms of women in sport, it is also a landmark event that should serve as the guiding light in eliminating the pay disparity between the genders;¹⁶⁸ something the USSF should take notice of.

VI. THE UNITED STATES' WOMEN'S NATIONAL TEAM AND ITS BATTLE WITH EQUAL PAY

The debate regarding equal pay has gained national notoriety in the United States through the sport of soccer. While the passing of the EPA was a progressive for employment legislation and women's rights, the act is by no means perfect and still continues to raise issues for employers and employees. Most recently, the USSF¹⁶⁹ has found itself under scrutiny as a result of a lawsuit and a series of allegations raised by the USWNT alleging violations of the EPA.¹⁷⁰ The composition of women of the USWNT of these lawsuits was not the USWNT of early years, considering that the popularity of the sport, as well as the development of the national team programs, has been evolving since the late 80s.¹⁷¹ In 1989, the U.S. Men's National Team ("USMNT") had not played in a World Cup in 40 years, while the USWNT was still in the early development stage.¹⁷² In just 30 years, World Cup soccer has become a global

¹⁶² See Marcus Christenson, *Lewes FC become first professional club to pay women and men equally*, THE GUARDIAN (July 12, 2017, 5:16AM), <https://www.theguardian.com/football/2017/jul/12/lewes-fc-first-club-equal-pay-men-women>.

¹⁶³ See *id.* (The Equality FC campaign is their mission to become the first, and only, club in the world to pay men and women the same. In addition to this, Lewes FC also provides the same budget to their mens and women's teams. They believe this campaign will demonstrate their commitment to fairness in the sport, but also view it as a wise business decision).

¹⁶⁴ See *id.*

¹⁶⁵ See *id.*

¹⁶⁶ See *id.*

¹⁶⁷ *Id.*

¹⁶⁸ See *id.*

¹⁶⁹ The USSF is the governing body of all forms of soccer and its players in the United States. In addition to governing the sport, the USSF also operates as a charity organization committed to making soccer a preeminent sport in the United States, as well as fostering its development at recreational and competitive levels.

¹⁷⁰ See Murrury & Morris, *supra* note 5.

¹⁷¹ See U.S. Soccer Reaching New Heights, *supra* note 160.

¹⁷² See *id.*

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

phenomenon, especially in the United States. The USMNT has consecutively played in seven World Cups, most recently advancing to the quarterfinals in 2002.¹⁷³ The USWNT is a powerhouse, winning machine. Even though its program and popularity developed later than the USMNT, female soccer has taken the country by storm. The USWNT has won three FIFA Women's World Cups and four Olympic Gold Medals, most recently winning the World Cup in 2019.¹⁷⁴

A. The Structure of the USSF

The USSF operates as a nonprofit 501(c)(3) organization,¹⁷⁵ meaning that it is a tax-exempt, charitable organization.¹⁷⁶ 501(c)(3) organizations fall into two primary categories: public charity and private foundation.¹⁷⁷ According to the USSF's 2018 990 form, it falls into the public charity category.¹⁷⁸ In order to qualify as a public charity, said organization must obtain at least 1/3 of its donation from a large base of public support.¹⁷⁹ The initiative to donate here is high, for these donations are also tax deductible to individuals.¹⁸⁰ Even though the USSF is technically a public charity, it claimed \$162,738,719 in net assets in 2017.¹⁸¹ The purpose of the group is to "promote and govern soccer in the United States in order to make it the preeminent sport recognized for excellence in participation, spectator appeal, international competitions, and gender equality."¹⁸² Gender equality is an interesting part of the mission statement, for the USSF has repeatedly been criticized for the large pay gap between male and female athletes.¹⁸³

B. The USSF Wears Two Hats: Charity Organization and Member of FIFA

FIFA, or the Federation Internationale de Football Association, consists of 209 members worldwide.¹⁸⁴ While not one of the original members, the USSF is a member of this governing body.¹⁸⁵ FIFA holds a series of tournaments and boasts that the game is played by

¹⁷³ See *id.*

¹⁷⁴ See *U.S. Soccer Awards*, U.S. SOCCER (2016), <https://www.ussoccer.com/history/awards/us-soccer-awards> [hereinafter *U.S. Soccer Awards*].

¹⁷⁵ See *United States Soccer Federation Foundation Inc.*, PROPUBLICA (2018), <https://projects.propublica.org/nonprofits/organizations/363976313>.

¹⁷⁶ See *What Does It Mean to be a 501(c)(3) Organization?*, FOUNDATION GROUP (2019), <https://www.501c3.org/frequently-asked-questions/what-does-it-mean-to-be-a-501c3-organization/>.

¹⁷⁷ See *What is a 501(c)(3)?*, FOUNDATION GROUP (2019), <https://www.501c3.org/what-is-a-501c3/>.

¹⁷⁸ FY 2018 Form 990, U.S. SOCCER, file:///C:/Users/jbodo/Downloads/20190218%20US%20Soccer%20Federation%20Public%20990_2018.pdf.

¹⁷⁹ See *What Does It Mean to be a 501(c)(3) Organization?*, *supra* note 176.

¹⁸⁰ See *id.*

¹⁸¹ See *id.*

¹⁸² See FY 2018 Form 990, *supra* note 178.

¹⁸³ See Jared Schwartz, *The astounding bonus gap between USWNT and USMNT*, THE NEW YORK POST (July 1, 2019, 5:43PM), <https://nypost.com/2019/07/01/the-astounding-bonus-gap-between-uswnt-and-usmnt/>.

¹⁸⁴ See *FIFA – SOCCER'S WORLD GOVERNING BODY*, U.S. SOCCER, <https://www.ussoccer.com/history/organizational-structure/fifa>.

¹⁸⁵ See *id.*

more than 150 million athletes, including 10 million women, with billions of fans watching.¹⁸⁶ FIFA is in charge of putting on the World Cup every four years, both for men and women.¹⁸⁷ In addition to hosting the tournaments, it is also in charge of all things related to the playing of the game: rules, referees, trades between teams, etc.¹⁸⁸ Most importantly, FIFA also sets the bonuses for these tournaments, which contributes to the massive pay gap between male and female soccer athletes.¹⁸⁹ For instance, the women's World Cup prize is \$30 million.¹⁹⁰ While this seems like a larger number on its face, the sum is split between all of the players and the winning team only takes home \$4 million of the total prize amount.¹⁹¹ In comparison, male champions are awarded a total prize of \$400 million and take home \$38 million if victorious. The women, therefore, take home only 7.5% of the total that men take home after the tournament.¹⁹² The winning team in the men's tournament takes home \$8 million more than all the prize money available for the women's tournament *in total*; this is a massive disparity.¹⁹³

While FIFA is not responsible for giving the prize money to team members, it determines how much to award the governing national federations who choose how much to give their players.¹⁹⁴ Even though, as an international body, FIFA does not fall under the guidelines of the EPA, the precedent set by such a large body is only exacerbating the problem.

VII. SOCCER, ESPECIALLY CONCERNING THE WORLD CUP, IS AN EXTREMELY LUCRATIVE BUSINESS

A. Advertisements During the Games Are A Cash Cow for Networks, Which Ends Up Helping Players in The Long Run

In the three years following the USWNT 2015 World Cup Victory, the women's team has generated more total revenue than the U.S. Men's team.¹⁹⁵ Traditionally, men's soccer was much more popular, with the peak revenue difference between the two teams occurring in 2011.¹⁹⁶ As the years passed, soccer became much more prevalent in our society, even more so

¹⁸⁶ See *id.* (tournaments include FIFA World Cup, Women's World Cup, U-20 Mens and Women's World Cup, U-17 Men's and Women's World Cup, Men's and Women's Olympic Committee, the FIFA Confederations Cup, etc.).

¹⁸⁷ See *id.*

¹⁸⁸ See *id.*

¹⁸⁹ Andrew Das, *What's a World Cup Title Worth? For U.S. Women's Soccer, Six Figures and Counting*, THE NEW YORK TIMES (July 7, 2019), <https://www.nytimes.com/2019/07/07/sports/soccer/womens-world-cup-bonuses.html>.

¹⁹⁰ See Abigail Hess, *The 2019 Women's World Cup prize money is \$30 Million – 7.5% of the Men's World Cup prize*, CNBC (2019), <https://www.cnbc.com/2019/06/07/the-2019-womens-world-cup-prize-money-is-30-million.html>.

¹⁹¹ See Associated Press, *FIFA Approves Women's World Cup Prize Money, Unions Not Satisfied*, SPORTS ILLUSTRATED (2018), <https://www.si.com/soccer/2018/10/26/fifa-womens-world-cup-prize-money-approved>.

¹⁹² See Hess, *supra* note 190.

¹⁹³ See *id.*

¹⁹⁴ See Reality Check team, *supra* note 107.

¹⁹⁵ See Rachel Bachman, *U.S. Women's Soccer Games Outearned Men's Games*, THE WALL STREET JOURNAL (June 17, 2019).

¹⁹⁶ See *id.* (In 2011, the USWN brought it under \$5 million, while the men's team earned almost \$20 million).

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

on the female side.¹⁹⁷ The women were winning championships much more frequently than men and their resulting revenue illustrated this.¹⁹⁸ Further, from 2016 to 2018, women's games generated about \$50.8 million, compared to \$49.9 million on the men's side.¹⁹⁹ Revenue is based mostly on ticket sales at games, with the men's total even including appearance fees that the opposing side pays for games.²⁰⁰ The women's total revenue doesn't include this, indicating that their generated revenue is even greater.²⁰¹

Soccer is a huge money-making, profit-driven business, generating almost \$49 million in marketing and sponsorship revenue from 2016 to 2018.²⁰² This includes the sale of broadcast rights, sponsorships, and jerseys.²⁰³ In fact, Nike has sold more of the USWNT jerseys in a single season than any other soccer team, male or female.²⁰⁴ This is also compared to soccer jerseys of international teams.²⁰⁵ The rise in jersey sales is not only going into Nike's pocket, but female athletes are finally able to cash in on their likeness.²⁰⁶ Following suit from the NFL, the USWNT has formed a union which allows the players to receive profits from their likeness.²⁰⁷ During negotiations for their current collective bargaining agreements, USWNT players argued for, and received, control of their licensing rights.²⁰⁸ This allows them not only to profit from the massive amount of jersey sales through Nike, but also on a variety of other merchandise they choose to sell individually.²⁰⁹

In addition to the massive amount of revenue received through jersey sales and other USWNT memorabilia, television broadcasts bring in a large amounts of money. The most watched soccer game in American history was the 2015 World Cup final between the USWNT and Japan.²¹⁰ A staggering 25 million people tuned in to watch the women's team win gold.²¹¹ Even though the 2019 World Cup final did not reach that monumental number, it still garnered more viewers than the 2018 Men's World Cup final.²¹² In fact, FOX provided more resources

¹⁹⁷ *See id.*

¹⁹⁸ *See id.* (In 2016, one year after the USWNT won the World Cup, they generated almost \$5 million more in revenue than the men's team).

¹⁹⁹ *See id.*

²⁰⁰ *See id.*

²⁰¹ *See id.*

²⁰² *See id.*

²⁰³ *See id.*

²⁰⁴ *See* Mohamed, *supra* note 16.

²⁰⁵ *See id.* (The USWNT jersey even outsold Brazil and Barcelona, two extremely popular male soccer teams).

²⁰⁶ *See* Bill Shaikin, *U.S. Women's Soccer Players to Start Cashing in on Licensing – That's Using Your Bobblehead*, THE LOS ANGELES TIMES, (Aug. 2, 2019).

²⁰⁷ *See id.*

²⁰⁸ *See id.*

²⁰⁹ *See id.*

²¹⁰ *See* Adnan Ilyas, *Financial Context for the Fair Pay Fight Between the USWNT and USSF*, SB NATION: STARS AND STRIPES (Aug. 29, 2019, 7:00AM), <https://www.starsandstripesfc.com/2019/8/29/20695405/uswnt-subsidizing-mls-other-economic-notes>.

²¹¹ *See id.*

²¹² Claire Atkinson, *Women's World Cup final ratings surpass last year's men's final*, NBC NEWS (July 8, 2019, 6:35 PM), <https://www.nbcnews.com/business/business-news/women-s-world-cup-final-ratings-surpass-last-year-s-n1027486> (The 2019 Women's World Cup final had 14 million views, with another 289,000 viewers electing to stream it. This is 22 percent more than the Men's World Cup final the year before).

to the 2019 Women's World Cup than to the men's tournament,²¹³ even going so far as to call the Women's World Cup a "crown jewel" at FOX sports.²¹⁴ Going beyond television, the USWNT final was also extremely successful for the FOX network on social media, gathering 17.8 million views across a variety of platforms.²¹⁵ Not only did the 2019 USWNT final account for 27 percent of all U.S. households watching television at the time of the game, but it was on par with other major sporting events.²¹⁶ It is clear that the broadcast rights of female athletes are worth at least as much as men, if not more.²¹⁷

While television rights and ticket sales drive the profits of the USSF, licensing rights allow female athletes to profit off their personal accomplishments.²¹⁸ Even more than sports advertisements, recent commercial deals are showing a much bigger interest on the women's side.²¹⁹ Two of the most recent sponsorship deals through the USSF have been offered on the women's side, through Secret Deodorant and Visa.²²⁰ Visa put at least 50% of its investment in the women's teams and women's soccer initiatives.²²¹ Advertisements are a huge source of revenue for the USSF, and it further proves that the country, as well as large companies that are willing to open their wallets, have a profitable interest in the USWNT.

VIII. USSF IS IN VIOLATION OF THE EQUAL PAY ACT PROVEN BY THE VAST DIFFERENCES IN MEN'S AND WOMEN'S NATIONAL TEAM SALARIES

A. Equal Play but Not Equal Pay

While women earn bonuses for World Cup performance, these bonus are drastically different depending on which gender you are.²²² USWNT players, individually, can earn a maximum, after bonuses and prizes for winning games/the tournament, of \$260,869.²²³ This is in stark contrast to the \$1.1 million that could be earned by their male counterparts, for

²¹³ See Ilyas, *supra* note 210.

²¹⁴ See Michael LoRe, *Women's World Cup One Of The 'Crown Jewels' At FOX Sports*, FORBES (May 30, 2019, 8:00 AM), <https://www.forbes.com/sites/michaellore/2019/05/30/womens-world-cup-one-of-the-crown-jewels-at-fox-sports/#567673036c05> (David Neal, producer at FOX sports has said, "[T]he Women's World Cup needs to be on the same footing as the Men's World Cup. We don't want it to be a laboratory; we don't want it to be a boutique event; we want to give the Women's World Cup the same prominence.").

²¹⁵ See Atkinson, *supra* note 212 (While this number is still lower than the 2015 final, this has to do more with the prime time showing of the game rather than actual viewership).

²¹⁶ See *id.*

²¹⁷ Ilyas, *supra* note 210.

²¹⁸ See Shaikin, *supra* note 206.

²¹⁹ See Sam Carp, *Report: USWNT Generate More Revenue Than Men's Team from 2016*, SPORTSPRO (June 18, 2019), <http://www.sportspromedia.com/news/uswnt-us-soccer-revenues-lawsuit>.

²²⁰ See Bachman, *supra* note 195.

²²¹ See *id.*

²²² See Schwartz, *supra* note 183; see also Murrery & Morris, *supra* note 5 (As is customary in larger tournaments, teams earn bonuses for winning more games, thus advancing further within the tournament. At the time the article was written, the USWNT had already earned \$90,000 in bonuses before reaching the quarter final. While this number seems large on its face, if FIFA were to award equal bonuses between both gendered teams, the women would be set to have earned about \$550,000. As the bonus structure currently stands, the men earn six times more from the USSF than the women in the exact same tournament).

²²³ See Murrery & Morris, *supra* note 5.

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

competing in the exact same tournament.²²⁴ Starting at the qualification phase, the men's team already starts with a leg up, earning more than double than players on the female team.²²⁵ This is clear violation of the EPA, for the two sets of athletes are performing the same skill, qualifying for the same major international tournament.²²⁶ Naturally players are rewarded with bonuses the further along they go in the qualification rounds.²²⁷ Again, the difference is shocking, with females earning a \$15,000 bonus for winning, while males get \$200,000 for winning games.²²⁸ Bonuses are given out once again if players are offered one of the coveted 23 spots on the team, with an average earning of \$68,750 and female athletes earning \$37,500.²²⁹ During the tournament, women earn \$3,000 for every win, while men receive \$12,500.²³⁰ In sum, at the end of the tournament, if victorious, female athletes will earn almost \$900,000 less than male athletes.²³¹

In terms of salaries, the USSF pays its female athletes on a fixed basis, while it offers men much more flexibility.²³² Men rely more on their bonuses, which makes sense considering they receive substantially²³³ more in bonuses than females. The disparity in pay is even more outrageous considering that women have outperformed the men in almost every single tournament in recent years.²³⁴ In the last twelve years, the USWNT has won the FIFA Women's World Cup four times, and received gold medals in the Olympics twice.²³⁵ On the other hand, in the same time frame, the USMNT has not won the FIFA World Cup, nor made it to the final four, or won any sort of Olympic medal.²³⁶

IX. PROPOSED SOLUTION: EQUAL BASE SALARY

A. In International Tournaments, Men and Women Should Start on the Same Playing Field

The best way to reduce the gender disparity in sports is to adopt the Australian model of legislation, incorporating key aspects of the Norwegian and Icelandic systems, and start male and female athletes at the same base pay and bonus structure.²³⁷

In terms of qualifying for major tournaments, such as the World Cup or the Olympic Games, players of both genders have to go through the same number of games to reach the

²²⁴ See *id.*

²²⁵ See *id.*

²²⁶ See *id.*

²²⁷ See *id.*

²²⁸ See *id.*

²²⁹ See *id.*

²³⁰ See Schwartz, *supra* note 183.

²³¹ See Murrery & Morris, *supra* note 5.

²³² See Schwartz, *supra* note 183.

²³³ See *id.*; see also Murrery & Morris, *supra* note 5.

²³⁴ See U.S. Soccer Awards, *supra* note 174.

²³⁵ See *id.*

²³⁶ See *id.*

²³⁷ See Ransom, *supra* note 12.

final.²³⁸ It's the same 90 minutes being played by both male and females, yet males are collecting a substantially higher paycheck.²³⁹ Per the EPA, you cannot discriminate based on gender when two people are performing jobs requiring "equal skill, effort, and responsibility, which are performed under similar working conditions, employed by the same employer."²⁴⁰ Requiring the USSF, the same employer for both teams, to start athletes out at the same base pay and give bonuses on the same pay scale, complies with the act. The current situation does not. Men and women are both playing soccer, for the same amount of time, in the same tournament, representing the same country. There is no reason that their initial salary should be different. While difficult to control the free market in terms of individual endorsements or sponsorships,²⁴¹ the percentages should still be equal from the start, so that even if there is less money for the women, that smaller amount of money is still being distributed evenly. As stated above, female athletes in the U.S. are being used more and more frequently in advertisements and ad campaigns, which awards them more money overall.²⁴² While this is a great start in bridging the gap, the continuation of advertisements is a gamble and typically awarded to only the top or most popular players.²⁴³ The U.S. should follow the lead of Norway in this situation, whose female athletes are being increasingly used for commercial purposes.²⁴⁴ The main difference is that in Norway, their overall base compensation is changing to reflect their increasing popularity.²⁴⁵

The USSF should follow the model set forth in Australia. As stated above, if pay should be based on "performance" constituting a factor other than sex, then according to that logic, the USWNT should be getting paid not just equal, but substantially more than the men. The USWNT has a bigger winning record and brings in more revenue.²⁴⁶ Similarly, the Australian Women's National team significantly outperforms its male national counterpart in terms of performance and national rankings.²⁴⁷ Additionally, in Norway the women's team is drastically more successful than the men's side.²⁴⁸ The women's team in Norway is a two-time European champion, one of the most successful teams in women's football, and almost always make an appearance at the World Cup.²⁴⁹ Conversely, the men's side has failed to qualify for a major tournament since Euro 2000.²⁵⁰ The difference between the U.S. and Norway is that in Norway, this discrepancy in performance and wages was recognized and changed; men awarded their commercial bonuses to women.²⁵¹ The USSF should take a cue from Norway and implement payment based on performance.²⁵² However, even though the Westfield

²³⁸ See Murrery & Morris, *supra* note 5.

²³⁹ See generally *id.*

²⁴⁰ Equal Pay Act of 1963, 29 U.S.C. §206(d).

²⁴¹ See Ransom, *supra* note 12.

²⁴² See Mohamed, *supra* note 16.

²⁴³ See *id.*

²⁴⁴ See Lewis, *supra* note 15.

²⁴⁵ See *id.*

²⁴⁶ See Schwartz, *supra* note 183.

²⁴⁷ See Zraick, *supra* note 92.

²⁴⁸ See Lewis, *supra* note 15.

²⁴⁹ See *id.*

²⁵⁰ See *id.*

²⁵¹ See *id.*

²⁵² See *id.*

SHOOTING FOR EQUALITY: THE U.S. WOMEN'S NATIONAL TEAM AND THEIR STRUGGLE FOR
EQUAL PAY

Matildas make less in revenue than their male counterparts, the Football Federation Australia still passed legislation to set equal base pay.²⁵³ The USWNT does not have this difference in revenue problem, as stated above.²⁵⁴ Female athletes are not only out performing their male counterparts, they are out producing them as well.²⁵⁵ Therefore, modeling new legislation in the U.S. after the Australian, Norwegian, and Icelandic models is the most efficient way to minimize the pay differential between the genders in soccer. Not only will this be a huge leap forward for female soccer players, but for all female athletes.

X. CONCLUSION

As soccer, specifically women's soccer, becomes more and more popular in the United States,²⁵⁶ pay rates should begin to reflect this change. The USSF is behind in this trend and is at risk of being in violation of the EPA.²⁵⁷ The best way for the USSF to proceed, and to ensure that they continue making money off the USWNT, is to follow suit from Australia,²⁵⁸ Norway²⁵⁹, and Iceland²⁶⁰ by setting an equal base pay rate for men and women. This will not only eliminate a potential lawsuit for violation of the federal statute, but it will set a precedent for women throughout sports and illustrate the great progress women have made in our society.

²⁵³ See Schwartz, *supra* note 183.

²⁵⁴ See Bachman, *supra* note 195.

²⁵⁵ See *id.*

²⁵⁶ See *id.*

²⁵⁷ See Schwartz, *supra* note 183.

²⁵⁸ See Ransom, *supra* note 12.

²⁵⁹ See Lewis, *supra* note 15.

²⁶⁰ See ICELAND REVIEW, *supra* note 14.