

# Pay Her More! How Sex and Motherhood Play a Role in the Unequal Pay of Women on the World Stage

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	296
II.	BACKGROUND.....	298
	A. <i>The Progression of Women’s Rights: Increasing Economic and Political Opportunities</i> .....	298
	B. <i>The Motherhood Penalty: Career Costs of Bearing Children</i> .....	300
III.	APPLICABLE LAW & CASE STUDIES .....	304
	A. <i>The United Nations</i> .....	305
	B. <i>Iceland</i> .....	306
	1. <i>Equal Pay for Equal Work</i> .....	307
	a. <i>Applicable Law</i> .....	307
	b. <i>Analysis</i> .....	307
	2. <i>Equality in the Board Room</i> .....	308
	a. <i>Applicable Law</i> .....	308
	b. <i>Analysis</i> .....	309
	3. <i>Paid Family Leave</i> .....	309
	a. <i>Applicable Law</i> .....	309
	b. <i>Analysis</i> .....	310

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C.	<i>Rwanda</i> .....	311
1.	<i>Gender Equality Equals Pay Equality</i> .....	312
a.	<i>Applicable Law</i> .....	312
b.	<i>Analysis</i> .....	313
2.	<i>Equality in Government Representation</i> .....	314
a.	<i>Applicable Law</i> .....	314
b.	<i>Analysis</i> .....	314
3.	<i>Paid Maternity Leave</i> .....	315
a.	<i>Applicable Law</i> .....	315
b.	<i>Analysis</i> .....	315
D.	<i>The United States</i> .....	316
1.	<i>Failing to Create Equality</i> .....	317
a.	<i>Applicable Law</i> .....	317
b.	<i>Analysis</i> .....	320
2.	<i>Ban the Box</i> .....	321
a.	<i>Applicable Law</i> .....	321
b.	<i>Analysis</i> .....	324
3.	<i>Why the United States Trails Behind</i> .....	325
IV.	PROPOSED SOLUTION .....	327

## I. INTRODUCTION

“In Poland, women earn 91 cents to every dollar a man earns.”<sup>1</sup> In Israel, 81 cents.<sup>2</sup> In the European Union, 84 cents.<sup>3</sup> “In South Korea, it’s just 65 cents.”<sup>4</sup> “In the United States, that figure is 80.5 [cents] according to the Census Bureau—and the gap is even higher for American women of color.”<sup>5</sup>

Women are paid less than men around the world.<sup>6</sup> Whether or not it is due to the motherhood penalty<sup>7</sup> or perceived lack of ambition or intelligence, in order to lessen the pay gap for women in professional industries such as medicine, law, and business the global community needs to enact better laws—specifically, employment and labor laws regarding gender equality in the workplace—ensuring fair hiring practices for women. In addition to unfair hiring practices, many women do not even apply for higher paying

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1. Lexie Schapitl, *Pay Discrimination Only Explains Part of the Gender Wage Gap*, VOX (Sept. 7, 2018), <https://www.vox.com/2018/9/7/17828964/gender-wage-gap-explained-netflix>[<https://perma.cc/QEZ6-6SJZ>].

2. *Id.*

3. Tara John, *Iceland Makes Equal Pay the Law*, TIME (Jan. 4, 2018), <http://time.com/5087354/iceland-makes-equal-pay-the-law/>[<https://perma.cc/B6PY-BEK5>].

4. Schapitl, *supra* note 1.

5. *Id.*

6. *See* Schapitl, *supra* note 1; *see* John, *supra* note 3.

7. “Motherhood penalty” refers to working mothers who experience additional disadvantages compared to non-mothers. The concept will be further analyzed in the Background section of the Comment, *infra* Section II.B.

jobs, because they believe they are unqualified or will not be given an equal opportunity. Women's employment efforts, or lack thereof, worsen the already present gap. Unfortunately, simply mandating equal pay for men and women will fail to resolve the issue.

In the United States, laws and regulations exist that make it illegal to pay men and women differently for equal work,<sup>8</sup> and similar laws exist in many other countries.<sup>9</sup> Despite these laws, a pay gap remains on a global scale between men and women.<sup>10</sup> Why? The current penalties for violations of these laws are not sufficient to actually deter or prevent unfair unemployment. In January 2018, Iceland implemented a law that will place the burden on employers rather than the employees to prove equality in pay.<sup>11</sup> This law will “legally enforce”<sup>12</sup> equal pay standards in a new way.<sup>13</sup>

“[O]vert pay discrimination between women and men” is what typically comes to mind when one thinks about the gender wage gap.<sup>14</sup> While women often ask for “equal pay for equal work,” gender discrimination is only responsible for a small amount of the pay gap. “The gender wage gap is also about choice and opportunity. . . . [It is] rooted in [global] social norms about women[,] family [and motherhood which constantly change and evolve—making it] much harder to solve.”<sup>15</sup> It is grounded in the way our society has evolved over the last one hundred and fifty years, during which more women started to be employed in jobs traditionally held by men.<sup>16</sup>

So, why are women around the world paid so much less than men? And what are countries doing to close the gap? This Comment will first present

8. See, e.g., Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56.

9. Jane Searle, *What Is Life Really like for Women in Iceland, the World's Most Woman-Friendly Country?*, THE SYDNEY MORNING HERALD (Nov. 2, 2016), <https://www.smh.com.au/lifestyle/health-and-wellness/what-is-life-really-like-for-women-in-iceland-the-worlds-most-womanfriendly-country-20161101-gsez8j.html> [<https://perma.cc/XVZ5-3SA5>].

10. See, e.g., *supra* notes 1–6.

11. See Jon Henley, “Equality Won’t Happen by Itself”: How Iceland Got Tough on Gender Pay Gap, THE GUARDIAN (Feb. 20, 2018), <https://www.theguardian.com/world/2018/feb/20/iceland-equal-pay-law-gender-gap-women-jobs-equality> [<https://perma.cc/V25V-6SF8>].

12. *Id.*

13. Camila Domonoske, *Companies in Iceland Now Required to Demonstrate they Pay Men, Women Fairly*, NPR (Jan. 3, 2018), <https://www.npr.org/sections/thetwo-way/2018/01/03/575403863/companies-in-iceland-now-required-to-demonstrate-they-pay-men-women-fairly> [<https://perma.cc/ZFT3-TYBA>].

14. Schapitl, *supra* note 1.

15. *Id.*

16. See, e.g., Equal Pay Act of 1963, *supra* note 8.

necessary background information about the evolution of women’s rights and the “motherhood penalty.” It will then evaluate the steps that Iceland and Rwanda have taken to create pay equity between men and women.<sup>17</sup> Additionally, it will address the United States’ failure to implement mandatory family leave and efforts to “ban the box”,<sup>18</sup> it will propose how the world can comprehensively combine these principles to reform global hiring systems and create equality for women in the workplace.

## II. BACKGROUND

Women’s rights have long been a heated debate. To better understand how far women’s rights have come, and how far we still have to go, we need to briefly look at the history of women’s rights and the role of motherhood in the global society.

### *A. The Progression of Women’s Rights: Increasing Economic and Political Opportunities*

Women have long been excluded from voting and participating in democracy. Starting at the end of the 18th century, women began to be excluded from some voting democracies in Europe.<sup>19</sup> During the 19th century, the question of whether women should be granted a right to vote came to fruition, specifically in Great Britain and the United States.<sup>20</sup> “By the early [20th] century, women had won the right to vote in national elections in New Zealand (1893), Australia (1902), Finland (1906), and Norway (1913).”<sup>21</sup> In the United States, however, women were only able to vote in some local elections.<sup>22</sup> “World War I and its aftermath speeded up the enfranchisement of women in [Europe] and elsewhere. [From 1914–1939], women in 28 additional countries acquired either equal voting rights with men or [at least] the right to vote in national elections.”<sup>23</sup>

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17. These inequalities are further felt by LGBTQ individuals and minority women. This Comment, however, will attempt to simplify this by only identifying and evaluating the issues facing women in general. While the solution proposed would benefit LGBTQ individuals and minority women, it would not fully solve the pay gap for these groups.

18. *Infra* Section III.D.2. Not to be confused with a different “ban the box,” centered on banning the box on employment forms inquiring about criminal history, the “ban the box” discussed in this Comment prohibits employers from requesting salary history information from job applicants.

19. *Women’s Suffrage*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/woman-suffrage> [<https://perma.cc/4WDB-EPNH>].

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

The United Nations Convention on the Political Rights of Women,<sup>24</sup> adopted in 1952, provides that “[w]omen shall be entitled to vote in all elections on equal terms with men, without any discrimination.”<sup>25</sup> “Historically, the United Kingdom and the United States provide characteristic examples of the struggle for women’s suffrage . . . .”<sup>26</sup> Between 1890 and 1920, women started to have more economic and political opportunities in the United States.<sup>27</sup> This is often called the “women’s era” by historians.<sup>28</sup> “Women were also aided by legal changes like [earning] the right to own property, control their wages, and make contracts and wills.”<sup>29</sup> The job market was also changing. During this time period, close to 5 million women started to work for wages.<sup>30</sup> While it was mostly domestic service or light manufacturing, like the garment industry, women leaving the home to work was revolutionary.<sup>31</sup> Previously, women were typically at home taking care of children and the home.<sup>32</sup> Now, women in America were even more vital to the economy as producers, working for wages, and as consumers.<sup>33</sup> Additional reform movements also allowed women to participate in politics, both at the state and national level.<sup>34</sup>

All this time, while women were getting more engaged in social and political spheres, they were still not guaranteed the right to vote in the United States.<sup>35</sup> Although women were voting in some fashion before 1920, and some states granted women the right to vote or run for office in the late 19th century, it wasn’t until the 19th Amendment in 1920 that women were *guaranteed* the right to vote.<sup>36</sup> The 19th amendment was “a huge victory”; however, “the National Women’s Party was unable to [get]

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24. Convention on the Political Rights of Women, Mar. 42, 1953, T.I.A.S. No. 8289, 193 U.N.T.S. 135.

25. *Id.*

26. ENCYCLOPÆDIA BRITANNICA, *supra* note 19.

27. CrashCourse, *Women’s Suffrage: Crash Course US History #31*, YOUTUBE (Sept. 26, 2013), <https://www.youtube.com/watch?v=HGEMscZE5dY> [<https://perma.cc/KX28-5CZ2>].

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *See id.*

36. *See, e.g.*, U.S. CONST. amend. XIX.

the same support for an Equal Rights Amendment (ERA)” until the 1960s and ‘70s.<sup>37</sup>

The Party believed that women needed equal access to education and employment opportunities, and here they came into contact with other women’s groups, [particularly] the League of Women Voters and the Women’s Trade Union League—which opposed the ERA, fearing that equal rights would mean an unraveling of hard-won benefits like mother’s pensions and laws limiting women’s hours of labor.<sup>38</sup>

Unfortunately, the ERA never saw success. However, the right to vote was significant for women.<sup>39</sup> While it did not lead to significant changes in legislation, or lead to a change in feminine gender roles in our society, it did increase female autonomy and increase the women’s presence outside the home.<sup>40</sup> The right to vote has advanced women to their current status in society. While there is still far more to be accomplished, women today have much to learn from the suffragettes and the rights they fought for.

### *B. The Motherhood Penalty: Career Costs of Bearing Children*

Motherhood is treated differently around the world, largely due to cultural influences.<sup>41</sup> The role women play in society is systematically rooted in each country’s culture—specifically, a woman’s role in the home and the family. The gender pay gap is even more prominent among mothers. This is known as the motherhood pay gap.<sup>42</sup> Proposed explanations for the motherhood wage gap specifically, include: “reduced investment in human capital by mothers, lower work effort by mothers compared with nonmothers, unobserved heterogeneity between mothers and nonmothers, and discrimination against mothers by employers.”<sup>43</sup> The motherhood pay gap can be explained through two separate classifications.<sup>44</sup> First, “as those that seek to identify important differences in the traits, skills, and behaviors between mothers and nonmothers (i.e., worker explanations)” and second, “[as] those that rely on the differential . . . treatment of mothers and nonmothers (i.e., discrimination explanations).”<sup>45</sup> “Mothers in the workforce experience

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37. CrashCourse, *supra* note 27.

38. *Id.*

39. *Id.*

40. *Id.*

41. This Comment will focus on the treatment of motherhood in Iceland, Rwanda and in the United States. *See infra* section III.

42. Shelley J. Correll et al., *Getting a Job: Is There a Motherhood Penalty?*, 112 U. CHI. AM. J. SOC. 1297, 1299 (2007).

43. *Id.*

44. *Id.*

45. *Id.*

additional disadvantage compared to [non-mothers], including a per-child wage penalty[.... T]he pay gap between mothers and non-mothers could in fact be larger than the pay gap between men and women.”<sup>46</sup>

Disadvantages for mothers may include anxiety over child care or finding the need to stay home with a sick child.<sup>47</sup> These disadvantages are seen by other members of the office or workforce.<sup>48</sup> Unfortunately, when a woman has a child, she is viewed as “significantly less competent and committed” because employers assume these disadvantages will take the women away from the office.<sup>49</sup> Some studies show that “visibly pregnant women managers are judged as being less committed to their jobs, less dependable and less authoritative, but . . . more emotional, and more irrational than otherwise equal women managers who are not visibly pregnant.”<sup>50</sup> Studies have found it difficult to determine whether actual differences in productivity between mothers and non-mothers are behind the motherhood penalty or whether it is due to a deep-rooted discrimination against women.<sup>51</sup>

As recently as the 1950s in the United States, women did not have a place outside the home.<sup>52</sup> Most women did not work, and of those who did, 70% had factory assembly jobs or office jobs.<sup>53</sup> While it was accepted that women may need “to earn a little money,” having a “career” was left for the men.<sup>54</sup> It was also legal for employers to put out a job posting asking specifically for men.<sup>55</sup> More specifically, the pay gap in the 1950s and 1960s can best be explained by lower education rates, lower workforce participation,

46. *Id.* at Introduction.

47. *Cf. id.* at 1298.

48. *Id.*

49. *Id.* Correll et al’s survey found competency ratings were 10% lower for mothers compared to non-mothers among otherwise equal candidates.

50. *Id.*

51. *Id.* at 1300. Mothers were considered to be 12.1% less committed to their jobs than non-mothers while fathers were perceived as being 5% *more* committed than non-fathers. Compared to childless men, mothers were rated 6.4% lower regarding commitment compared to childless men. “Mothers were 6 times less likely than childless women and 3.35 times less likely than childless men to be recommended for hire. Similarly, mothers are also disadvantaged when it comes to promotions” or promotion eligibility. “Childless women are 8.2 times more likely to be recommended for a promotion than mothers. In an audit study conducted with real employers, childless women still have an advantage. [Childless women] also receive 2.1 times as many callbacks as equally qualified mothers.”

52. *Explained: Why Women Are Paid Less* (Vox Production, Netflix, Sept. 5, 2018).

53. *Id.*

54. *Id.*

55. *Id.*

discrimination being legal, and the concept of “feminine” jobs.<sup>56</sup> Additionally, social norms about culture and aptitude contributed.<sup>57</sup> These norms fostered the idea that women were less intelligent, should raise children, could not hold power, and should be homemakers.<sup>58</sup> The women’s liberation movement changed things.<sup>59</sup> The many factors causing wage gap during the 1950s and 1960s have shrunk—except for the fact that women are assumed responsible for raising children.<sup>60</sup> This factor remains present in current society.<sup>61</sup> Women “are assumed to be the primary caregiver,” regardless of whether they now have careers.<sup>62</sup>

Global studies show that most people think that women with children under school age (5 years old) should not work full time.<sup>63</sup> But, 70% of people in the United States think new fathers should work full-time.<sup>64</sup> This symbolizes the discrimination, whether conscious or subconscious, women face when applying to jobs. Many people think that once a woman has children, she cannot be a mother *and* part of the workforce.<sup>65</sup> According to the PEW Research Center, a mother will spend, on average, nine hours more a week on child care or household activities compared to her male counterpart.<sup>66</sup> Over a year, that’s equivalent to three months of what is essentially a full-time job.<sup>67</sup> More recently, according to a 2018 UN Women Study, “[d]espite their increasing presence in public life, women continue to do 2.6 times the unpaid care and domestic work that men do.”<sup>68</sup>

This is the center of the motherhood penalty. The burden of completing these childcare or household activities is placed on women. If the labor was equally divided between husband and wife, society could approach equality in pay. “[H]ousework is often overlooked as work, even though it is often as laborious (or in some cases, more so) as any paid job.”<sup>69</sup> As

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56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* About 15% in United States, 5% in United Kingdom, 18% in Denmark, and 16% in Sweden.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development 2*, UNITED NATIONS WOMEN (2018); *see also* Kristin Wong, *There’s a Stress Gap Between Men and Women. Here’s Why It’s Important*, N.Y. TIMES (Nov. 14, 2018), <https://www.nytimes.com/2018/11/14/smarter-living/stress-gap-women-men.html> [<https://perma.cc/G5JR-7GN9>].

69. Wong, *supra* note 68.



Silvia Federici described it in 1975, the unpaid nature of domestic work reinforces the assumption that “housework is not work, thus preventing women from struggling against it, except in the privatized kitchen-bedroom quarrel that all society agrees to ridicule, thereby further reducing the protagonist of a struggle.”<sup>70</sup> Further, “[t]he difference with housework lies in the fact that not only has it been imposed on women, but it has been transformed into a natural attribute of our female physique and personality, *an internal need*, an aspiration, supposedly coming from the depth of our female character.”<sup>71</sup> Federici hit the nail on the head: housework has been so engrained into society as women’s responsibility that few could imagine women not performing housework.<sup>72</sup> When a woman complains about her housework, or asks for help from her partner, she is seen as failing at *her* duty and *her* responsibility to the family.<sup>73</sup>

A Danish study in 2018 looked at male and female earnings from people with and without children.<sup>74</sup> The study found that when a man has children, his earnings are unaffected, while a woman with children experiences a decrease in earnings.<sup>75</sup> The data showed that the discrepancy between pay for men and women is more about being a mother, and not a woman.<sup>76</sup> Globally, women without children earn on average 96 cents for every dollar a man earns.<sup>77</sup> That is significantly less of a gap than the statistics mentioned earlier—indicating the true issue is motherhood and not being a woman.<sup>78</sup> However, despite this realization, we cannot tell women not to have children or to neglect their children and focus on their careers in order to close the wage gap.

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70. Silvia Federici is an Italian-American feminist, writer, and activist. SILVIA FEDERICI, *REVOLUTION AT POINT ZERO: HOUSEWORK, REPRODUCTION, AND FEMINIST STRUGGLE* 16 (PM Press, 2012).

71. *Id.* (emphasis added).

72. *Id.*

73. *See id.*

74. *See generally* Henrik Kleven et al., *Children and Gender Inequality: Evidence from Denmark* (Nat’l Bureau of Econ. Research, Working Paper No. 24219, 2018).

75. *Id.* at 19–20.

76. *Id.* at 25, 42.

77. Tim Worstall, *One Thing Missing From This Generally Excellent Gender Pay Gap Explanation*, FORBES (Aug. 3, 2016), <https://www.forbes.com/sites/timworstall/2016/08/03/one-thing-missing-from-this-generally-excellent-gender-pay-gap-explanation/#4ee209b26b2e> [<https://perma.cc/675P-5LLN>]; Sarah Kiff, *The Truth About the Gender Wage Gap*, VOX (Sept. 8, 2017, 8:38 a.m.), <https://www.vox.com/2017/9/8/16268362/gender-wage-gap-explained> [<https://perma.cc/BF83-NWV4>].

78. *See generally* Kleven, *supra* note 74.

Some critics argue this discrepancy is not a bad thing. Many women make a job choice based on their desire to have families.<sup>79</sup> This Comment argues that presenting the choice as a penalty undermines that women have a choice and that spending time with children has an extreme value. Women want to be with their families.<sup>80</sup> A pay gap based on choices is different than a pay gap based on gender discrimination. However, our global society trains women to think they have to be the primary caregiver, instead of giving them an option.<sup>81</sup> Many women are also not given the choice between their career or their family.<sup>82</sup> Overall, regardless of whether a woman chooses motherhood over career or whether this choice is made for her, the role motherhood plays in the wage gap cannot be ignored or discredited.

### III. APPLICABLE LAW & CASE STUDIES

All around the world, women struggle at work. They struggle to earn equal pay when they land a job in a male dominated industry.<sup>83</sup> They struggle to earn a fair opportunity to be hired at jobs typically structured for men.<sup>84</sup> And, they struggle to get past the stopgaps in place that systematically discriminate against woman when seeking employment after motherhood.<sup>85</sup> These struggles individually can prevent women from success, yet, most women face them all. These issues are intertwined and affect women even in the most civilized countries.<sup>86</sup>

The United Nations has taken steps to close the gap and alleviate the struggles women face at work, so have several countries, such as Iceland and Rwanda. A deeper dive into each of these organizations and countries helps fully understand the benefits and detriments these policies have had on women.

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79. *Id.*

80. *See* Wong, *supra* note 68.

81. *See id.*

82. *See id.*; *see also Explained: Why Women Are Paid Less*, *supra* note 52. In the United States, there are three times more single moms than single dads. These mothers have to care for their children full time without a co-parent or partner to pick up the slack.

83. This Comment specifically compares struggles faced by women in Iceland, Rwanda and the United States. *See infra* section III.

84. *Id.*

85. Kleven, *supra* note 74.

86. *See* the example of Iceland, *infra* section III.B.

A. *The United Nations*

The United Nations has played a major role in the advancement of women. In 1948 the Universal Declaration of Human Rights was signed.<sup>87</sup> In 1975, Mexico City held the United Nations' first World Conference on Women, and the UN deemed 1975 the international women's year.<sup>88</sup> Three other World Conference on Women were held after this one.<sup>89</sup> In 2000, Security Council Resolution 1325 on women and peace and security was adopted.<sup>90</sup> In 2008, Security Council Resolution 1820 on women, peace and security was adopted.<sup>91</sup> On July 2, 2010, in a landmark resolution, the United Nations established UN Women.<sup>92</sup>

UN Women has developed a series of flagship programs . . . focused on strengthening the voice of women and girls, [seeking] to remove structural barriers to gender equality and women's empowerment. Each program is guided by international human rights treaties and contributes to achieving the UN Women's Strategic Plan.<sup>93</sup>

The UN also created an initiative called Step it up for Gender Equality whose goal is to achieve a 50-50 planet (true equality between men and women) by 2030.<sup>94</sup>

Most importantly, the United Nations Convention on the Elimination of All Forms of Discrimination against Women was passed in 1979.<sup>95</sup> Iceland signed the convention on July 24, 1980, and ratified it on June 18, 1985.<sup>96</sup> Rwanda signed the convention on May 1, 1980, and ratified it on March 2, 1981.<sup>97</sup> The United States signed the convention on July 17, 1980, but has

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87. See G.A. Res. 217 A, Universal Declaration of Human Rights (Dec. 10, 1948).

88. See United Nations, *The Journey of Women's Rights: 1911-2015*, YOUTUBE (Mar. 5, 2015) [<https://perma.cc/49SP-3UU9>] [hereinafter *Journey of Women's Rights*].

89. *Id.* After the conference in Mexico City in 1975, there were three other conferences: in Copenhagen in 1980, in Nairobi in 1985 and in Beijing in 1995. The last was followed by a series of five-year reviews.

90. See S.C. Res. 1325 (Oct. 31, 2000).

91. See S.C. Res. 1820 (June 19, 2008).

92. *Journey of Women's Rights*, *supra* note 88.

93. *Id.*

94. For more information on the initiative and how its implementation, see Rep. of the S.C., E/CN.6/2015/3 (2014).

95. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 20378, at 13 [hereinafter *CEDAW*].

96. *Id.* at 2.

97. *Id.*

not yet ratified it.<sup>98</sup> The convention's purpose was to discuss discrimination against women in all aspects of women's lives.<sup>99</sup> However, it fails to address employment rights, hiring practices, or female equality in jobs.<sup>100</sup> The treaty simply states that women should be allowed to work, but does not discuss the extent of labor or the treatment of women in the workplace.<sup>101</sup> Additionally, the treaty has not been updated since its enactment and thus does not reflect the current struggles of women in the workplace, including hiring discrepancies, pay inequality, or even maternity leave. Finally, while the U.N. has created the initiative Step It Up, no new conventions or resolutions have been passed in order to achieve the goal of 50-50 by 2030.

### B. Iceland

In Iceland nearly half the members of parliament are female, two-thirds of children are born to unmarried mothers, and relationship status is viewed as inconsequential.<sup>102</sup> It is not surprising: Iceland, like many Nordic countries, has been a champion of equality and women's rights.<sup>103</sup> In 1975, women went on strike to challenge the pay gap.<sup>104</sup> In 1980, Iceland elected its first female President.<sup>105</sup> Since then, the number of women in parliament has skyrocketed<sup>106</sup> and policy changes favoring women has increased.<sup>107</sup> Iceland is decades ahead of other industrialized nations.

Iceland's government, led by its second female prime minister, Katrin Jakobsdottir, is committed to eradicating the gender pay gap by 2022.<sup>108</sup> Because of Iceland's progressive laws advocating gender equality, Iceland has long been deemed the best country in the world for women.<sup>109</sup> The women in Iceland are highly educated, with a high percentage holding managerial positions.<sup>110</sup> Icelandic women also receive support from the state through paid family leave and equal pay, and can therefore pursue careers

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98. *Id.* at 3.

99. *Id.* at 14.

100. *Id.* at 18.

101. *Id.*

102. Searle, *supra* note 9.

103. See Katrin Jakobsdottir, *Iceland Gets Tough on Equal Pay*, CNN, <https://www.cnn.com/2018/03/07/world/katrin-jakobsdottir-icelands-equal-pay-asequals-iwd-intl/index.html> [<https://perma.cc/VN8L-EP4E>].

104. See *Explained: Why Women Are Paid Less*, *supra* note 52.

105. *Id.*

106. *Id.*

107. *Id.*

108. Jakobsdottir, *supra* note 103.

109. *Id.*

110. *Id.*

whilst balancing family commitments.<sup>111</sup> Iceland has also topped the World Economic Forum's Global Gender Gap Index for nine years in the row.<sup>112</sup>

### 1. Equal Pay for Equal Work

#### a. Applicable Law

In January 2018, Iceland began enforcing a new law that requires employers with twenty-five or more workers *to prove* that they pay men and women equally for equal work.<sup>113</sup> Under the new law, companies and government agencies employing at least twenty-five people have to obtain government certification of their equal-pay policies.<sup>114</sup> Those that fail to prove pay parity face fines up to \$500 a day per infraction.<sup>115</sup> Iceland has had some form of equal pay law since 1961 but for the first time the Icelandic Parliament has taken additional measures to ban pay discrimination in the workplace.<sup>116</sup> This law establishes a procedure to enforce equal pay standards, and for the first time, it places the burden on the employer, not the employee, to prove that its pay practices are fair.<sup>117</sup>

#### b. Analysis

The current gender pay gap in Iceland sits around 14% to 18%, and with this new law, the government plans to eradicate it by 2022.<sup>118</sup> To do so, fines<sup>119</sup> of \$500 a day will be imposed upon non-compliant employers; however, the legislation passed in January 2018 and it is too early to know whether the measure is already effective. Presumably, the burden shift from the employee to the employer should make it easier for women who bring claims against their employers for unequal pay. Indeed, the employer

111. *Id.*

112. *Id.* From 2009 to 2018.

113. *New Law in Iceland Aims at Reducing Country's Gender Pay Gap*, NPR (Jan. 5, 2018), <https://www.npr.org/2018/01/05/576082449/new-law-in-iceland-aims-at-reducing-countrys-gender-pay-gap> [<https://perma.cc/4R3T-DXW9>].

114. *In Iceland, it's Now Illegal to Pay Men More than Women*, AL JAZEERA NEWS (Jan. 1, 2018), <https://www.aljazeera.com/news/2018/01/iceland-country-legalise-equal-pay-180101150054329.html> [<https://perma.cc/WSB4-BC3K>].

115. *Id.*

116. NPR, *supra* note 113.

117. *See id.*

118. John, *supra* note 3.

119. *See id.*

bears the burden to prove it engages in pay parity<sup>120</sup> and thus has to produce the necessary information (pay stubs, hiring practices, and internal notes) to support its claim rather than the woman having to prove it by producing discovery obtained from an often unwilling or uncooperative employer.

Some critics argue that men and women are biologically different, and, therefore, this new Icelandic parity law will fail.<sup>121</sup> Canadian psychologist Jordan Peterson is one of these critics, who, claims<sup>122</sup> that women are more agreeable than men and show disposition to care-taking positions, while men are generally more assertive and better negotiators.<sup>123</sup> “Therefore, not only does it make no sense to pretend that men and women are equal, but playing with notions of wages and equality can also cause serious damage to the economy.”<sup>124</sup> Peterson’s arguments constitute the exact polarizing opinions that guide much of the equality debate.<sup>125</sup> The psychological undertones of a women’s “place” or “role” in society impact women regardless of the country they live.<sup>126</sup> Whether these biases are conscious or subconscious, these ideologies and beliefs guide much of the movement against pay parity.<sup>127</sup>

## 2. *Equality in the Board Room*

### a. *Applicable Law*

In 2008, Iceland passed a law aimed at guaranteeing gender balance on the board of directors of Iceland’s largest companies.<sup>128</sup> The goal was for any company with more than fifty employees to have a management team comprising at least 40% women.<sup>129</sup> This law went into effect for public institutions in 2010, and for publicly traded companies in 2013.<sup>130</sup>

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120. NPR, *supra* note 113.

121. See Alice Demurtas, *Iceland’s Equal Pay Law Unrealistic and Dangerous, Canadian Psychologist Says*, THE REYKJAVÍK GRAPEVINE (Apr. 30, 2018), <https://grapevine.is/news/2018/04/30/icelands-equal-pay-law-unrealistic-and-dangerous-canadian-psychologist-says/> [https://perma.cc/YDT8-8NSY].

122. *Id.*

123. *Id.*

124. *Id.*

125. See, e.g., Correll, *supra* note 42.

126. *See id.*

127. *See id.*

128. Andie Fontaine, *Landmark Gender Equality Law In Iceland Not Producing Significant Returns*, THE REYKJAVÍK GRAPEVINE (Oct. 8, 2018), <https://grapevine.is/news/2018/10/08/landmark-gender-equality-law-in-iceland-not-producing-significant-returns/> [https://perma.cc/CP8N-4WW9].

129. *Id.*

130. *Id.*

*b. Analysis*

Iceland has taken steps to improve female representation at the highest echelons in business. In 2015, “44% of boardroom executives in Iceland were female, compared with an OECD average of 20%.”<sup>131</sup> Other countries can take this example of affirmative action and implement similar laws since Iceland has seen tangible success from these policies. While full success has not been achieved, the laws have proved beneficial in ensuring women get a seat at the table, and the future is optimistic. According to some reports, however, these laws have had little impact.<sup>132</sup> In 2018, the board of directors of the 250 largest companies in Iceland are, on average, only comprised of 10% women.<sup>133</sup> Companies with 50 to 150 employees have also fallen short of the 40% rule.<sup>134</sup>

*3. Paid Family Leave**a. Applicable Law*

In 1981, Iceland passed a bill guaranteeing women a three-month maternity leave.<sup>135</sup> In 1988, it increased to six months.<sup>136</sup> Despite the progressiveness of this law, it re-established cultural norms by providing only maternity leave.<sup>137</sup> Parliament saw this as an issue and passed a bill guaranteeing paternity leave in 2000.<sup>138</sup> Men have to use the leave, or lose the benefit.<sup>139</sup> The legislation’s purpose is to ensure that a child is entitled to spend time with both parents, while each parent receives 80% of their salary while on leave.<sup>140</sup> Icelandic families are given nine months parental

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131. John, *supra* note 3. The Organization for Economic Co-operation and Development (OECD) has 36 member countries and aims to promote policies that will improve the economic and social well-being of people around the world.

132. See Fontaine, *supra* note 128.

133. *Id.*

134. *Id.*

135. *Explained: Why Women Are Paid Less*, *supra* note 52.

136. *Id.*

137. *Id.*

138. *Id.*; Guðrún Helga Sigurðardóttir, *Iceland: Fewer Take Paternity Leave*, NORDIC LABOUR J. (Dec. 8, 2014), <http://www.nordiclabourjournal.org/nyheter/news-2014/article.2014-11-27.4319266250> [<https://perma.cc/D69Q-RGAC>].

139. *Explained: Why Women Are Paid Less*, *supra* note 52.

140. Chris Weller, *These 10 countries have the best parental leave policies in the world*, BUSINESS INSIDER (Aug. 22, 2016), <https://www.businessinsider.com/countries-with-best-parental-leave-2016-8#iceland-5> [<https://perma.cc/H3G7-B9XA>].

leave.<sup>141</sup> Mothers and fathers get three months each, after which they get a further three months to share between them.<sup>142</sup> Another three months of unpaid leave is available to them after, if they so choose.<sup>143</sup> In 2008, fathers could receive up to 535,000 Icelandic Króna (\$4,019) a month while on paternity leave, based on their salary.<sup>144</sup> In 2010, in the wake of the financial crash, that ceiling was nearly halved down to 300,000 Króna (\$2,253).<sup>145</sup> In 2016, Iceland's government established a maximum payment of 520,000 Króna (\$4,991.84) per month, with other limitations.<sup>146</sup> Taking it one step further, Iceland's government has goals to extend parental leave to twelve months.<sup>147</sup> The government's plan for extended leave is set to be released between 2020 and 2021.<sup>148</sup> Overall, Icelandic law is ahead of the curve. Iceland has created an atmosphere that will most likely lead to true equality between men and women within the next few years.

*b. Analysis*

Iceland's paternity leave law has changed societal norms.<sup>149</sup> Companies now know, that regardless of whether they hire a man or woman, they can and *will* both take paid family leave after the birth of a child.<sup>150</sup> Iceland reserves thirteen weeks of parental leave for fathers.<sup>151</sup> While, not all fathers use this benefit, more than 90% do.<sup>152</sup> Iceland also prevents new moms or dads from transferring their portion of leave to the other parent.<sup>153</sup> The government wants to ensure both parents can work and that children get to spend time with both parents.<sup>154</sup> However, studies show that men are

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141. Sigurðardóttir, *supra* note 138.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. For more information on maternity and paternity leave in Iceland, see PROMOTE ICELAND, DOING BUSINESS IN ICELAND 34 (Arnar Guðmundsson ed., 16th ed. 2018).

147. Guðrún Helga Sigurðardóttir, Parental leave in Iceland gives dad a strong position, *Nordic Labour J.* (Apr. 12, 2019), <http://www.nordiclabourjournal.org/i-fokus/in-focus-2019/future-of-work-iceland/article.2019-04-11.9299118347> [<https://perma.cc/SHB8-G28L>].

148. *Id.*

149. *See Explained: Why Women Are Paid Less*, *supra* note 52.

150. *Id.*

151. Sarah Kliff, *A Stunning Chart Shows the True Cause of the Gender Wage Gap*, *VOX* (Feb. 19, 2018), <https://www.vox.com/2018/2/19/17018380/gender-wage-gap-child-care-penalty> [<https://perma.cc/XHH4-6QAG>].

152. *Id.*

153. *See* Weller, *supra* note 140.

154. *Id.*



not taking as much paternity leave as women.<sup>155</sup> 74% of fathers took paternity leave in 2016, a percentage that continues to decline.<sup>156</sup> In 2015, 80% of fathers opted for paternity leave, while in 2008, it was as high as 90%.<sup>157</sup>

Furthermore, those who do take advantage of their paternity leave are choosing to not take the full time allotted, reports RÚV.<sup>158</sup> Icelandic men are entitled to 3 months paternity leave, but 50% of those men chose to take less than 3 months in 2016, compared to just 23% back in 2008.<sup>159</sup> While men are still taking less leave than women, at least it is offered. Research has also shown that there are many benefits to paternity leave, besides equality between men and women. These benefits include a more active paternal role in child-care tasks and increased early interaction with the child, which has long-term benefits for a child's learning abilities.<sup>160</sup> Paternity leave is also beneficial for a woman to progress in her career, while not being detrimental to a man's career.<sup>161</sup>

True equality has not been accomplished in Iceland. However, the success of the Icelandic laws in attempting to reach these goals encourages the global community and signals that change is possible.

### C. Rwanda

Rwanda is on the United Nation's list of 48 least developed nations.<sup>162</sup> Despite this, Rwanda also finds itself on another list: a top leader in gender

155. See Nanna Árnadóttir, *Fewer Men Taking Paternity Leave*, THE REYKJAVÍK GRAPEVINE (Apr. 6, 2017), <https://grapevine.is/news/2017/04/06/fewer-men-taking-paternity-leave/> [<https://perma.cc/LX3D-ZMJ9>].

156. *Id.*

157. *Id.*

158. *Id.* Ríkisútvarpið (RÚV) is Iceland's national public-service broadcasting organization; HALLGRÍMUR INDRÍÐASON, *Fæðrum sem taka fæðingarorlof fækkar enn* [Fathers Who Take Paternity Leave Are still Declining] (sic) (May 4, 2017), <http://www.ruv.is/frett/fedrum-sem-taka-faedingarorlof-faekkar-enn> [<https://perma.cc/3VST-N8WW>].

159. Árnadóttir, *supra* note 155.

160. Tara John, *The Benefits of Paternity Leave*, THE ECONOMIST (May 15, 2015), <https://www.economist.com/the-economist-explains/2015/05/14/the-benefits-of-paternity-leave> [<https://perma.cc/8BWD-3CU5>].

161. *Id.*

162. Stéphanie Thomson, *How Rwanda Beats the United States and France in Gender Equality*, WORLD ECONOMIC FORUM (May 2, 2017), <https://www.weforum.org/agenda/2017/05/how-rwanda-beats-almost-every-other-country-in-gender-equality/> [<https://perma.cc/38S4-GW5Q>].

equality, coming in fifth out of 144 countries in 2016.<sup>163</sup> Despite being one of the poorest countries in the world, Rwanda has a very successful economy.<sup>164</sup> Rwanda has a stable and remarkably corruption-free government, where women hold key leadership roles and whose policies are cited as a model for gender inclusiveness.<sup>165</sup> Does this make one want to sprint to Rwanda? It should. “[O]ver the last decade, the country has averaged a GDP growth of nearly 8% per year and is so incredibly clean, green and safe that it has been dubbed the Singapore of Africa”.<sup>166</sup> A compulsory education program puts boys and girls in equal numbers in primary and secondary schools.<sup>167</sup> Women can now own and inherit property and are active leaders in all sectors of the nation, including business. Additionally, national mandates are successfully reducing violence against women.<sup>168</sup> Despite being subject to some of the world’s worst violence and corruption, Rwanda was able to turn things around<sup>169</sup> and this is largely because of the power of women.

### *1. Gender Equality Equals Pay Equality*

#### *a. Applicable Law*

Before 1994, women in Rwanda were not allowed to speak in public or open bank accounts without the authorization of their husbands.<sup>170</sup> “Following 100 days of slaughter [during the] 1994 [genocide], Rwandan society was left in chaos. The death toll was between 800,000 and 1 million.”<sup>171</sup> Records show that immediately following the genocide, Rwanda’s remaining population of 5.5 to 6 million was 60–70% female.<sup>172</sup> Most of these women had never been educated or raised with the expectations of obtaining a

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163. *Id.*

164. *Id.*

165. Christine Amour-Levar, *Rwanda, a Success Story of Women Empowerment*, HUFFPOST, (Jan. 5, 2018), [https://www.huffingtonpost.com/entry/rwanda-a-success-story-of-women-empowerment\\_us\\_5a4f1d87e4b0ee59d41c09ad](https://www.huffingtonpost.com/entry/rwanda-a-success-story-of-women-empowerment_us_5a4f1d87e4b0ee59d41c09ad) [<https://perma.cc/3THF-T4X8>].

166. *Id.*; see also *Intended Nationally Determined Contribution (INDC) for the Republic of Rwanda*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE (ratified Nov. 2015).

167. See Amour-Levar, *supra* note 165.

168. *Id.*

169. *Id.*

170. *Explained: Why Women Are Paid Less*, *supra* note 52.

171. Gregory Warner, *It’s The No. 1 Country For Women in Politics — but not in Daily Life*, NPR (July 29, 2016), <https://www.npr.org/sections/goatsandsoda/2016/07/29/487360094/invisibilia-no-one-thought-this-all-womans-debate-team-could-crush-it> [<https://perma.cc/GW2W-AE2N>].

172. *Id.*; see also Thomson, *supra* note 162.

career.<sup>173</sup> In pre-genocide Rwanda, it was almost unheard of for women to own land or to take a job outside the home.<sup>174</sup>

“In the aftermath of the devastating 1994 Genocide, the challenge of creating a lasting peace depended greatly on the actions of women.”<sup>175</sup> President Paul Kagame decided that Rwanda was so demolished that men’s labor alone could not rebuilt it.<sup>176</sup> Consequently, the country’s new constitution, passed in 2003, aimed at implementing initiatives promoting gender equality. The government pledged that girls’ education would be encouraged,<sup>177</sup> and that women would be appointed to leadership roles, such as government ministers and police chiefs.

### *b. Analysis*

Kagame intended not only to try to catch up with the rest of the western world in reaching equality, but to be a leader for gender equality as well.<sup>178</sup> Thanks to these initiatives, Rwanda has one of the highest rates of female labor force participation in the world at 86%.<sup>179</sup> The pay gap is also smaller than in most other countries, with women in Rwanda earning 88 cents for every dollar earned by men.<sup>180</sup> Men and women are equally likely to work outside the home.<sup>181</sup> Post-genocide, women took on jobs that they never had before, such as police officer, member of the military, mayor, governor, and women took charge to make changes in the country.<sup>182</sup> Although no mandatory requirement as to the number of women in the workforce exists—unlike for parliament seats—women’s roles in society have expanded. The new constitution, the increase in the number of educated women, and a shift in Rwandan cultural norms towards accepting that women play greater roles in society made these changes possible.

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173. Warner, *supra* note 171.

174. *Id.*

175. *Where We Work: Rwanda*, WOMEN FOR WOMEN INT’L, <https://www.womenforwomen.org/where-we-work/rwanda> [<https://perma.cc/MTE7-GUC9>].

176. Warner, *supra* note 171.

177. *Id.*; Amour-Levar, *supra* note 165.

178. Warner, *supra* note 171.

179. To compare, only 56% of women are employed in the United States, with numbers declining. Thomson, *supra* note 162.

180. Women in the United States are only making 74 cents per dollar. *Id.*

181. *See Explained: Why Women Are Paid Less*, *supra* note 52.

182. *Id.*

## 2. Equality in Government Representation

### a. Applicable Law

Rwanda has placed an importance on female representation in government. In the new 2003 constitution, 30% of parliamentary seats are reserved for women.<sup>183</sup> The constitution also created the role of “Gender Monitor,” which ensures public programs are complying with the country’s goals of gender equality.<sup>184</sup> The Rwandan society welcomed the new policies regarding parliamentary seats, and even elected women beyond the mandatory minimums.<sup>185</sup> In the 2003 election, 48% of parliamentary seats went to women.<sup>186</sup> In the next election, 64% went to women.<sup>187</sup>

### b. Analysis

Today, Rwandan politics constitutes a model of gender inclusiveness and ranks as one of the top countries in the world for gender equality at the top professional echelons.<sup>188</sup> In the 2018 election, women took 67% of parliament seats, more than double the reserved amount.<sup>189</sup> Rwanda implements gender equality right: it encourages women to get educated and have a role in the government.<sup>190</sup> Empowering and encouraging women to participate more fully in the public sphere is essential to resolving the global disparity between men and women in the workplace.<sup>191</sup> Gender diversity in public institutions is particularly crucial, given that these decision-making bodies create the rules that affect people’s rights, behaviors and life choices.<sup>192</sup> An increase of women in public life results in both lower levels of inequality and increased confidence in national governments.<sup>193</sup> The increased presence of women cabinet ministers coincides with a rise in public health spending across many countries.<sup>194</sup> Ensuring that governments reflect the diversity of the society they represent guarantees a balanced

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183. Warner, *supra* note 171.

184. See *Explained: Why Women Are Paid Less*, *supra* note 52.

185. Warner, *supra* note 171.

186. *Id.*

187. *Id.*

188. *Id.*

189. Eugène Kwibuka, *Rwanda: Women to Take 67% of Parliamentary Seats*, THE NEW TIMES (Sept. 5, 2018), <https://allafrica.com/stories/201809050028.html> [<https://perma.cc/9HWE-9SMM>].

190. Thomson, *supra* note 162.

191. *Women in Government*, ORG. FOR ECON. COOPERATION AND DEV., <http://www.oecd.org/gov/women-in-government.htm> [<https://perma.cc/U8YS-KPJL>] [hereinafter *OECD*].

192. *Id.*

193. *Id.*

194. *Id.*

perspective that enables an inclusive approach to policy making and service delivery.<sup>195</sup>

### 3. Paid Maternity Leave

#### a. Applicable Law

The abundance of women in Rwandan politics could explain its pro-women laws, including three months of paid maternity leave.<sup>196</sup> The International Labor Organization (ILO) introduced “a maternity leave benefits insurance scheme in Rwanda to compensate all female employees absent from employment because of pregnancy, giving birth, and subsequently caring for the new-born child.”<sup>197</sup> In 2016, the Rwanda Social Security Board (RSSB) announced that “the maternity leave benefits insurance scheme introduces twelve weeks of fully paid leave, during which a monthly compensation equivalent to the mother’s last salary shall be given.”<sup>198</sup> In addition,

Convention No. 183 (2000) on maternity protection requires that cash benefits to be paid to the woman on maternity leave shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. According to the law, monthly contributions to the scheme managed by RSSB shall be 0.6% of the employee’s gross salary, both the employer (public and private) and employee shall contribute . . . 0.35%.<sup>199</sup>

#### b. Analysis

An ILO study influenced the 2016 law and “recommended, among others [sic], that a scheme to finance maternity benefits be a compulsory social insurance fund, supported by contributions from both male and female employees and employers.”<sup>200</sup>

The maternity protection legislation aims at enabling women to combine their reproductive and productive roles successfully, as well as at eliminating

195. *Id.*

196. Thomson, *supra* note 162.

197. Press Release, International Labour Organization, Rwanda: ILO Welcomes the Launch of a New Maternity Leave Benefits Scheme (Nov. 17, 2016), [https://www.ilo.org/africa/media-centre/pr/WCMS\\_536225/lang--en/index.htm](https://www.ilo.org/africa/media-centre/pr/WCMS_536225/lang--en/index.htm) [<https://perma.cc/U7B7-8NF7>] [hereinafter *ILO*].

198. *Id.*

199. *Id.*

200. *Id.*

discrimination against women in the labor market.<sup>201</sup> Providing maternity leave for female employees is a necessary step to ensure that women can take care of both their careers and their families.

The world can learn from Rwanda. Hopefully, countries can make similar changes on their own, without the need for a genocide to kill a large portion of the country's men. Rwanda's success can be replicated in other societies by mandating certain percentages of government positions be reserved for women. These principles can also be implemented in the boardroom. Both Rwanda and Iceland have implemented affirmative action in employment, and more importantly, have seen success. Unlike Iceland though, Rwanda focuses on affirmative action in government representation.<sup>202</sup> Sitting around hoping that things will change is not helpful or proactive. Creating affirmative action laws that ensure women get a seat at the table—whether in the boardroom or in the assembly—is beneficial and necessary.

#### D. *The United States*

While some countries are taking steps to help women reach equality, one prominent country falls short: The United States. The United States, as a nation, fails to guarantee maternity leave.<sup>203</sup> Moreover, it is the only industrialized nation that does not guarantee workers, women or men, paid family leave.<sup>204</sup> The United States also does not have federal laws mandating programs to assist women balancing work and family.<sup>205</sup> Individual companies are thus the ones deciding whether to implement such policies and when programs promoting work/life balance are considered costly or unnecessary, they do not get implemented.<sup>206</sup> This failure to implement policies contributes to the motherhood penalty: the government does not provide any protection and if an individual company does not offer anything either, a woman taking a leave to care for her children is punished as a result.<sup>207</sup> This never-ending cycle negatively impacts families as a whole, not only women.<sup>208</sup>

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201. *Id.*

202. John, *supra* note 3; Warner, *supra* note 171.

203. John Greenberg, *Yes, the United States is the only industrialized nation without paid family leave*, POLITIFACT (July 25, 2016), <https://www.politifact.com/truth-o-meter/statements/2016/jul/25/kirsten-gillibrand/yes-us-only-industrialized-nation-without-paid-fam/> [https://perma.cc/C4SJ-Z75F].

204. *Id.*

205. *See id.*

206. *See id.*

207. *Cf. id.*

208. *Cf. id.*

## 1. Failing to Create Equality

### a. Applicable Law

In the 1960s, the United States enacted new laws intended to create equality for men and women.<sup>209</sup> The Equal Pay Act of 1963 prohibits sex-based wage discrimination in the United States.<sup>210</sup> The law mandates equal pay for equal work by forbidding employers from paying men and women different wages or from offering different benefits for doing jobs that require the same skills and responsibilities.<sup>211</sup> Title VII of the Civil Rights Act of 1964 banned employers from discriminating on the basis of sex.<sup>212</sup> It was not until 1971, however, that the Supreme Court ruled in *Reed v. Reed*, 404 U.S. 71 (1971), that laws that provided different treatment among those similarly situated solely on the basis of sex were unconstitutional and thus violated the Equal Protection Clause of the U.S. Constitution.<sup>213</sup>

The U.S. Equal Employment Opportunity Commission (EEOC) was created by “the historic Civil Rights Act of 1964.”<sup>214</sup> The Act was an “omnibus bill addressing not only discrimination in employment, but also discrimination in voting, public accommodations, and education as well.”<sup>215</sup> Title VII of the employment section of the Civil Rights Act, a legislative compromise, “prohibit[s] discrimination based on race, color, national origin, sex, religion, and retaliation.”<sup>216</sup> According to the EEOC:

That compromise resulted in a bill that eliminated any real enforcement authority by the EEOC. Instead, EEOC, a five-member bipartisan commission was left only with the power to receive, investigate, and conciliate complaints where it found reasonable cause to believe that discrimination had occurred. Where the EEOC was unsuccessful in conciliating the complaints, the statute provided that only individuals could bring private lawsuits, and where EEOC found evidence of “patterns or practices” of

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209. See Equal Pay Act of 1963, *supra* note 88.

210. *Id.*

211. While this appears to be similar to the Icelandic law on its face, this law fails to implement a way to police or enforce these policies. In turn, companies in the United States are not held accountable for pay discrimination. *See id.*

212. *Id.*

213. *Reed v. Reed*, 404 U.S. 71, 76–77 (1971) (Bottom of Form).

214. *Pre 1965: Events Leading to the Creation of EEOC*, EQUAL EMP’T OPPORTUNITY COMM’N, <https://www.eeoc.gov/eeoc/history/35th/pre1965/index.htm> [<https://perma.cc/2LBQ-UQT6>] [hereinafter *Creation of EEOC*].

215. *Id.*

216. *Id.*

discrimination, EEOC could then refer such matters to the Department of Justice for litigation.<sup>217</sup>

[Today, the EEOC is responsible for] enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information. [It is also illegal] to discriminate against a person who complains about discrimination, files a charge of discrimination, or participates in an employment discrimination investigation or lawsuit. [These federal laws] "apply to all types of work situations and scenarios, including hiring, firing, promotions, harassment, training, wages, and benefits."<sup>218</sup>

On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act of 2009.<sup>219</sup> The statute was Congress's legislative check on the Supreme Court, as the Act overturned the Supreme Court's decision *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007).<sup>220</sup> *Ledbetter* had "severely restricted the time period for filing complaints of employment discrimination concerning compensation,"<sup>221</sup> and Congress's action furthered "the EEOC's longstanding position that each paycheck that contains discriminatory compensation is a separate violation regardless of when the discrimination began." Significantly, the retroactivity provision in the Act is fundamental to those who face discrimination at work and seek justice.<sup>222</sup>

In 2016, then President Barack Obama issued an executive order that would cover more than 63 million employees.<sup>223</sup> The order required companies with over 100 employees to report to the EEOC their employees pay, broken down by gender, race, and ethnicity.<sup>224</sup> The initiative was set to take effect in March 2018.<sup>225</sup> In 2017, the Trump administration issued a stay of Obama's initiative, stating that the initiative lacked "practical utility"

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217. *Id.*

218. *Id.*

219. *Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009*, EQUAL EMP'T OPPORTUNITY COMM'N, [https://www.eeoc.gov/eeoc/publications/brochure-equal\\_pay\\_and\\_ledbetter\\_act.cfm](https://www.eeoc.gov/eeoc/publications/brochure-equal_pay_and_ledbetter_act.cfm) [<https://perma.cc/56AS-DEM21>].

220. *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007), *superseded by statute*, Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (2009).

221. *Id.*

222. *Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009*, *supra* note 219.

223. Lydia Dishman, *Obama Aims to Close the Wage Gap With a New Proposal for Salary Transparency*, FAST COMPANY: THE FUTURE OF WORK (Jan. 29, 2016), <https://www.fastcompany.com/3056117/obama-aims-to-close-the-wage-gap-with-a-new-proposal-for-salary-transpare> [<https://perma.cc/LM2S-SVQ7>].

224. *Id.*

225. *Questions and Answers: The Revised EEO-1 and Summary Pay Data*, EQUAL EMP'T OPPORTUNITY COMM'N, <https://www.eeoc.gov/employers/eeo1survey/2017survey-qanda.cfm> [<https://perma.cc/Y42D-4KZ5>].



and was “unnecessarily burdensome.”<sup>226</sup> The Trump administration also argued it did not adequately address issues of privacy and confidentiality.<sup>227</sup> In November 2017, several public interest groups challenged the stay, and in March 2019, the Court reinstated the reporting rules initiated by the Obama administration.<sup>228</sup> While the EEO-1 Reporting deadline was September 30, 2019, many companies did not report since there are no penalty for not reporting.<sup>229</sup> The Trump EEOC does not want to enforce these reporting requirements; thus, it is as if these requirements do not exist.

Finally, the Family Medical Leave Act (FMLA) provides workers *unpaid* leave for up to twelve weeks.<sup>230</sup> The FMLA specifically lays out that leave can be taken for: “the birth of a child and to care for the newborn child within one year of birth”<sup>231</sup> and/or “the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement.”<sup>232</sup> Significantly, Congress included in the Act’s findings section that “due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men.”<sup>233</sup> Congress not only concedes that caretaking falls on women, but further acknowledged the importance in the development of children including both father’s and mother’s involvement in early childrearing and childcare.<sup>234</sup> Even though the purpose of the act includes “promot[ing] the goal of equal employment opportunity for women

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226. Danielle Paquette, *The Trump Administration Just Halted this Obama-Era Rule to Shrink the Gender Wage Gap*, WASH. POST (Aug. 30, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/08/30/the-trump-administration-just-halted-this-obama-era-rule-to-shrink-the-gender-wage-gap/> [<https://perma.cc/X7KF-A34Z>]; Memorandum from Office of Info. and Regulatory Affairs to Acting Chair Victoria Lipnic, EQUAL EMP’T OPPORTUNITY COMM’N (Aug. 29, 2017) [hereinafter *Memo*].

227. *Memo*, *supra* note 226.

228. See generally EEO Reports/Surveys, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/employers/reporting.cfm> [<https://perma.cc/4YE9-T9V2>].

229. *Id.*

230. Family and Medical Leave Act of 1993 (FMLA), Pub. L. No. 103-3, 107 Stat. 6, 29 U.S.C. §§ 2601-2654 (2018).

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

and men,” the data still shows childbearing responsibilities often fall on women.<sup>235</sup>

*b. Analysis*

A case study of school teachers in New York City illustrates America’s failure to reach gender equality in the workplace.<sup>236</sup> The NYC Department of Education does not have any maternity leave policy.<sup>237</sup> Instead, teachers have to use banked sick days if they want to continue receiving pay during leave.<sup>238</sup> For reference, the norm for most maternity leaves is six to eight weeks, so these teachers are attempting to bank years worth of sick days.<sup>239</sup> Many teachers have not accrued enough days to cover that time, especially if it is not a teacher’s first childbirth.<sup>240</sup> Thus, teachers borrow future sick days (i.e. that they have not yet accrued) from the Department of Education to maintain their income while on leave, thus sending their sick bank into negative numbers.<sup>241</sup> Once they exhaust those borrowed days, they are left with nothing.<sup>242</sup> Some major U.S. cities offer teachers far better options for maternity leave than New York; for instance, Chicago allows birth mothers to take 90 total days at full or partial pay.<sup>243</sup> Yet, maternity leave policies for teachers in Denver,<sup>244</sup> Seattle,<sup>245</sup> and Boston,<sup>246</sup> resemble New York City’s: unpaid unless you use sick time, under specific and often complicated circumstances.<sup>247</sup> Houston teachers are forced to use their sick days when

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235. See also Pew Research Center, *The narrowing, but persistent, gender gap in pay*, <https://www.pewresearch.org/fact-tank/2019/03/22/gender-pay-gap-facts/> [<https://perma.cc/BU6D-UAX8>].

236. Emily James, *Teachers Shouldn’t Have to Hoard Sick Days to Invent Maternity Leave*, HUFFPOST (May 17, 2018, 5:48 AM), [https://www.huffingtonpost.com/entry/opinion-james-teachers-maternity-leave\\_us\\_5afc3fede4b0a59b4dff7fa3](https://www.huffingtonpost.com/entry/opinion-james-teachers-maternity-leave_us_5afc3fede4b0a59b4dff7fa3) [<https://perma.cc/S3YG-V38R>].

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Agreement Between Denver Association of Educational Office Professionals (Daeop) and School District No. 1 in the City and Country of Denver and State of Colorado*, DENVER PUB. SCH. (Mar. 19, 2019), <http://denverteachers.org/wp-content/uploads/DAEOP-Agreement-2016-19.pdf> [<https://perma.cc/Y5S5-25L4>].

245. *How to Apply for Maternity Leave*, SEATTLE PUB. SCH. (Mar. 19, 2019), [https://www.seattleschools.org/UserFiles/Servers/Server\\_543/File/District/Departments/Human%20Resources/Leaves/FAQchildbearing.pdf](https://www.seattleschools.org/UserFiles/Servers/Server_543/File/District/Departments/Human%20Resources/Leaves/FAQchildbearing.pdf) [<https://perma.cc/V5RM-BW9A>].

246. Richard Stutman, *Contractual Benefit Package for All Teachers*, BOSTON TEACHER UNION, [https://btu.org/wp-content/uploads/contractual\\_benefit\\_package\\_teachers\\_2011.pdf](https://btu.org/wp-content/uploads/contractual_benefit_package_teachers_2011.pdf) [<https://perma.cc/V4PZ-W5DT>].

247. James, *supra* note 236.

they take leave; they are not even given the option to take unpaid leave and to save their sick days for an actual illness.<sup>248</sup>

This is not the way women should be taking maternity leave, especially teachers. These women educate and care for our youth but are prevented from doing the same for their own children. The United States' failure to implement comprehensive mandatory maternity leave on a national level is hurting women in the workplace and the future generations. Policies must be implemented immediately to solve this issue—the future of our children depends on it.

## 2. *Ban the Box*

### a. *Applicable Law*

State and local governments are increasingly adopting laws and regulations that prohibit employers from requesting salary history information from job applicants.<sup>249</sup> Known as “ban the box” legislations,<sup>250</sup> the laws aim at ending the cycle of pay discrimination.<sup>251</sup> Some laws also prohibit an employer from relying on an applicant’s pay history if discovered or volunteered to set compensation; others prohibit an employer from taking disciplinary action against employees who discuss pay with coworkers.<sup>252</sup> However, employers remain allowed to ask about salary history in most parts of the country.<sup>253</sup> To reduce the gender and racial pay gap, some states and cities have banned employers from asking about prior pay.<sup>254</sup> California,<sup>255</sup> Connecticut, Delaware, Hawaii, Massachusetts, New Jersey, New York, Oregon, Puerto Rico, and

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248. *Id.*; *FMLA FAQ*, HOUSTON INDEP. SCH. DIST., [https://www.houstonisd.org/cms/lib2/tx01001591/centricity/domain/16074/fmla\\_faq.pdf](https://www.houstonisd.org/cms/lib2/tx01001591/centricity/domain/16074/fmla_faq.pdf) [<https://perma.cc/9775-JMQ5>].

249. *Salary History Bans*, HRDIVE, <https://www.hrdiver.com/news/salary-history-ban-states-list/516662/> [<https://perma.cc/SK4J-MHLP>].

250. Not to be confused with a different “ban the box,” centered on banning the box on employment forms inquiring about criminal history.

251. *Salary History Bans*, *supra* note 249.

252. *Id.*

253. Yuki Noguchi, *More Employers Avoid Legal Minefield by Not Asking About Pay History*, NPR, (May 3, 2018), <https://www.npr.org/2018/05/03/608126494/more-employers-avoid-legal-minefield-by-not-asking-about-pay-history> [<https://perma.cc/V9ZL-ECCA>].

254. *Id.*

255. See Roy Maurer, *California ‘Bans the Box,’ Prohibits Salary History Queries*, SOC’Y FOR HUMAN RES. MGMT, (Oct. 23, 2017), <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/california-bans-the-box-prohibits-salary-history-queries.aspx> [<https://perma.cc/7SL6-XEBU>].

Vermont have enacted state-wide salary history bans.<sup>256</sup> Chicago, Louisville, New Orleans, and Kansas City have enacted local bans on salary history.<sup>257</sup> In Michigan and Wisconsin, salary history bans were prohibited.<sup>258</sup>

Making matters more complex, courts have issued varying interpretations of what is legal.<sup>259</sup> The court battle as yet to rise to the Supreme Court, but lower courts have had to weigh in on the issue. In 2018, a federal district court said banning questions about prior pay violated freedom of speech.<sup>260</sup> However, the Ninth Circuit Court of Appeals ruled in favor of a female plaintiff who sued because her salary was determined using her past pay, which caused her to be paid less than her male colleagues.<sup>261</sup> Still, other circuits have ruled in different ways, allowing employers to still ask the question.

Many companies are taking action before past pay inquiries are banned by law. Companies like Amazon,<sup>262</sup> Wells Fargo, American Express, Cisco, Google and Bank of America<sup>263</sup> have all updated their hiring policies and procedures to eliminate inquiries into past pay.<sup>264</sup> These national, and global companies often adapt their policies around their regional presence.<sup>265</sup> Many of these companies are based in California, which has banned salary history inquiries.<sup>266</sup>

While the United States Supreme Court has yet to address the issue of banning the box directly, in 1971, in *Griggs v. Duke Power Company*, 401 U.S. 424, 430 (1971), it said that “practices, procedures, or tests neutral

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256. See *Salary History Bans*, *supra* note 249.

257. *Id.*

258. *Id.*

259. Noguchi, *supra* note 253.

260. See also Joseph DiStefano, *Court: Philly Salary-History Ban Violates Free Speech, but Firms Can't Use Data to Underpay*, THE INQUIRER DAILYNEWS.COM (May 1, 2018), <http://www2.philly.com/philly/blogs/inq-phillydeals/phillys-job-applicant-salary-history-ban-federal-judge-20180501.html> [<https://perma.cc/K4EK-9QU8>].

261. See also Bill Chappell, *Women Can't Have Prior Salaries Used Against Them*, Court Says In Equal Pay Case, NPR (Apr. 10, 2018), <https://www.npr.org/sections/thetwo-way/2018/04/10/601096889/women-cant-have-prior-salaries-used-against-them-court-says-in-equal-pay-case> [<https://perma.cc/SE76-AVQ9>].

262. Caroline O'Donovan, *Amazon Won't Ask Prospective Hires For Salary History Anymore*, BUZZFEED.NEWS (Jan. 17, 2018), <https://www.buzzfeednews.com/article/carolineodonovan/amazon-wont-ask-prospective-hires-for-salary-history-anymore#.aoxMM55aBw> [<https://perma.cc/G3E5-R4G4>].

263. Jena McGregor, *Bank of America is the latest company to ban this dreaded job-interview question*, THE WASHINGTON POST (Jan 29, 2018), [https://www.washingtonpost.com/news/on-leadership/wp/2018/01/29/bank-of-america-is-the-latest-company-to-ban-this-dreaded-job-interview-question/?noredirect=on&utm\\_term=.bb3be5946fa1](https://www.washingtonpost.com/news/on-leadership/wp/2018/01/29/bank-of-america-is-the-latest-company-to-ban-this-dreaded-job-interview-question/?noredirect=on&utm_term=.bb3be5946fa1) [<https://perma.cc/6GSW-2NAH>].

264. Noguchi, *supra* note 253.

265. See O'Donovan, *supra* note 262.

266. *Id.*; see generally 2015 Bill Text CA S.B. 106.

on their face, and even neutral in terms of intent, cannot be maintained if they operate to ‘freeze’ the status quo of prior discriminatory employment practices.”<sup>267</sup> This concept has been built upon to ban salary history. In *Griggs*, employees sought review of the lower court’s decision, which concluded that the requirements of a high school education or the results of a general intelligence test as conditions of employment in, or transfer to jobs did not violate Title VII.<sup>268</sup> The Court reversed and found that the requirements did not bear a demonstrable relationship to the successful performance of the jobs and that instead they operated to disqualify black applicants at a substantially higher rate than white applicants for jobs that were formerly filled only by white employees.<sup>269</sup> The employer’s lack of discriminatory intent was not controlling because courts were required to look to the consequences of the employment practices, not simply to the motivation.<sup>270</sup>

*Griggs* was followed by the 1982 Ninth Circuit Court of Appeals’ decision in *Kouba v. Allstate Ins. Co.*, 691 F.2d 873 (9th Cir. 1982). In *Kouba*, Allstate argued that the use of prior salary is an acceptable business reason that allows to predict an agent’s future performance.<sup>271</sup> Without deciding the merits of this claim because it was only reviewing a motion for summary judgment’s decision, the court discussed one of the exceptions to the prohibition of “differential payments between male and female employees doing equal work” allowed under the Equal Pay Act and it acknowledged that pay disparity is allowed if it is based on an acceptable business reason, for instance if it is based “on any other factor than sex.”<sup>272</sup>

In 1995, the Second Circuit Court of Appeals went further and defined equal work in *Tomka v. Seiler Corp.*, 66 F.3d 1295 (2d Cir. 1995): Equal work does not require that the jobs be identical, only that they be substantially equal.<sup>273</sup> These precedents have created the atmosphere that surrounds the current “ban the box” legislation.

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267. *Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1971).

268. *Id.*

269. *Id.*

270. *Id.*

271. *Kouba v. Allstate Ins. Co.*, 691 F. 2d 873, 878 (9th Cir. 1982).

272. *Id.* at 875.

273. *Tomka v. Seiler Corp.*, 66 F. 3d 1295, 1295 (2d Cir. 1995).

*b. Analysis*

Efforts to “ban the box” have fallen short. Many factors contribute to why someone switches jobs or careers: for instance, harassment in the workplace may lead to women leaving a job with higher pay or promotion opportunities; motherhood may also lead to women leaving a job before a promotion or raise. Nevertheless, women looking for new employment opportunities are often asked about past salary.<sup>274</sup> Asking about past salary has its pros and cons. However, including past salary information in the hiring process can create a never-ending cycle where women continue to get lower pay. How so?

A few ways. Either the woman is offered less money because the new employer knows the woman will accept a lower offer based on her salary history, or, if a woman moves into a new industry or applies for a “reach” position (a higher role than the one the woman currently sits in), the new organization considers the woman’s prior salary as an indicator that she is not good enough for the organization (correlating salary with skills). This can also cut the other way. When a woman wants to apply to a lower paid position in order to get different benefits (such as more telecommuting), the potential employer will assume the woman would not accept the role because it is “beneath her” or they cannot afford her.

Without being exposed to prior salary figures, employers have to determine whether a female candidate is qualified based on non-discriminatory characteristics such as professional and educational experience and technical skills rather than a number. An employer forced to look at a job candidate without the bias of past salary information should then the candidate as a gender-neutral person, without the subconscious and conscious judgment of how much that person earns. Unfortunately, salary is often tied with one’s perception of skill or intelligence and removing this information from the process can help lessen the wage gap.

While some states in America are implementing new laws to prevent people from inquiring about past salary, these laws have received backlash.<sup>275</sup> Opponents argued that withholding this information from employers or preventing employees from inquiring violates the Constitution’s First Amendment freedom of speech.<sup>276</sup> It is unclear if, or when, this issue will be presented in front of the United States Supreme Court, or if Congress will pass a federal law mandating a ban on salary history. Regardless, the United States is still far behind other industrialized countries, like Iceland and Rwanda. The United States has failed to provide basic accommodations

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274. *Id.*

275. DiStefano, *supra* note 260.

276. *Id.*

for women, including paid family leave, and also lacks standard employment laws that would protect women when seeking employment.

### 3. *Why The United States Trails Behind*

Iceland and Rwanda may have seen success in closing the wage gap due to dramatic differences in population size compared to the United States. According to the World Bank, the population of Iceland in 2017 was only 343,400<sup>277</sup> and the population of Rwanda was 11,980,937 million.<sup>278</sup> Neither Iceland nor Rwanda compare to the population of the United States—325,147,121 million in 2017.<sup>279</sup> This large discrepancy in population may play a role in Iceland's and Rwanda's equality and the effectiveness of their laws. The lack of success of comparable laws in the United States could be due to the huge population, however, it could also be due to American conservatism and democratic ideals. Both Iceland and Rwanda have different governmental structures than the United States.<sup>280</sup> Both countries have enacted progressive laws to empower women.<sup>281</sup> Meanwhile the United States continues to pass conservative-minded reforms, as President Trump preaches "Make America Great Again"—a hint that some Americans want to boomerang back in time to a different era where "radical social change" was not a possible agenda.

According to a 2016 Pew Research Study, a majority of people who voted for Trump believe that diversity has had no positive effect (or even a negative effect) on their lives and no positive effect on the country,<sup>282</sup> while 72% of Hillary Clinton voters considered that diversity has made the country a better place.<sup>283</sup> The study also shows that a much greater share of 2016 Trump supporters (81%) than 2016 Clinton supporters (19%) said "life in America today is worse than it was 50 years ago" for people like them.<sup>284</sup> When

277. The World Bank, <https://data.worldbank.org/indicator/SP.POP.TOTL> [<https://perma.cc/AAS9-54BP>] (last visited Mar. 19, 2019).

278. *Id.*

279. *Id.*

280. *See supra* Sections III.B., III.C.

281. *Id.*

282. Pew Research Center, *6 charts that show where Clinton and Trump supporters differ*, <http://www.pewresearch.org/fact-tank/2016/10/20/6-charts-that-show-where-clinton-and-trump-supporters-differ/> [<https://perma.cc/FXB9-RMT8>].

283. *Id.*; *see also* Laura Liswood, *Women's rights have gone into reverse. But wait, look who's driving*, WORLD ECONOMIC FORUM (Mar. 8, 2017), <https://www.weforum.org/agenda/2017/03/womens-rights-sexual-equality-in-reverse/>.

284. *See* Liswood, *supra* note 283.

comparing these statistics together, as well as the demographics of the 2016 Trump voter base, it can be inferred that conservative white men do not think there should be equality between men and women.<sup>285</sup>

Fast forward to 2018, and the views of the 2016 voters have come to fruition. According to a 2018 Haas Institute for a Fair and Inclusive Society report, published by the University of California Berkeley, the United States has become less inclusive.<sup>286</sup> In other words, the United States has become less welcoming to women, minority groups, and people with disability—compared to the rest of the world since 2016.<sup>287</sup> In 2016, the United States was the 23rd most inclusive country in the world.<sup>288</sup> In 2017, that ranking dropped to 69th.<sup>289</sup> The 2018 study ranked the United States is 58th—not as poor as 2017, but not close to how it ranked in 2016.<sup>290</sup> The major reason why the US consistently ranks less than countries like the Netherlands, Sweden, and the United Kingdom is because of the number of people in U.S. prisons and jails, said Stephen Menendian, one of the authors of the report and the assistant director of the Haas Institute.<sup>291</sup> One reason for the improved ranking of the United States in 2018 could be the #MeToo movement, which according to the Haas report, did play a role in the inclusiveness rating of the United States.<sup>292</sup> This movement has revealed not only the extent of sexual harassment in the workplace, but the failure of existing laws and enforcement efforts to curb it.<sup>293</sup> The #MeToo story is ongoing, but is yet another reminder of gender inequality in the United States and the world.<sup>294</sup> Regardless of these additional factors that may have impacted the ranking, the appearance that the United States is not inclusive perpetuates the appearance of discrimination toward women.

Even while discounting the difference in politics and political structure in the United States, compared to in Iceland or Rwanda, population size is hard to ignore. Achieving equality is always easier when you have less people to convince of its importance and to enforce it against.

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285. Cf. Pew Research Center, *supra* note 282.

286. *2018 Inclusiveness Index*, Haas Institute for a Fair and Inclusive Society, [https://haasinstitute.berkeley.edu/sites/default/files/haasinstitute\\_2018inclusivenessindex\\_publish.pdf](https://haasinstitute.berkeley.edu/sites/default/files/haasinstitute_2018inclusivenessindex_publish.pdf) [<https://perma.cc/2QSK-7FR3>].

287. *Id.*; Harmeet Kaur, *The US is much less inclusive than it was two years ago. Here's why*, CNN (Dec. 30, 2018), <https://www.cnn.com/2018/12/30/us/inclusiveness-index-haas-states/index.html> [<https://perma.cc/6ZU7-BCYZ>].

288. *Id.*

289. *Id.*

290. *Id.*

291. Kaur, *supra* note 287.

292. *2018 Inclusiveness Index*, *supra* note 286.

293. *Id.*

294. *Id.*



## IV. PROPOSED SOLUTION

Discrimination towards women has been ongoing for centuries, in many forms. It is not something that can be fixed overnight. Iceland and Rwanda are taking steps to shrink the wage gap. Yet despite their valiant efforts, they are still not close to eliminating it. Consequently, more needs to be done. A law simply addressing wages, or job opportunity, or prior salary is not enough. The international community needs to take steps to ensure equality for both men and women, because when women succeed—the world succeeds.

Women account for one-half of the potential human capital in any economy.<sup>295</sup> More than half a billion women have joined the world's work force over the past thirty years.<sup>296</sup> According to the World Bank, countries with greater gender equality are more prosperous and competitive.<sup>297</sup> Additionally, an extra year of secondary school for girls can increase their future earnings by 10-20%.<sup>298</sup> Girls with secondary education are up to six times less likely to be child brides than those with little or no education.<sup>299</sup> Countries that invest in girls' education have lower maternal death rates, infant deaths rates, lower rates of HIV and AIDS, and better child nutrition.<sup>300</sup> When women participate in civil society and politics, governments are more open, democratic, and responsive to citizens.<sup>301</sup> When women have a seat at the negotiating table, peace agreements are more inclusive and durable.<sup>302</sup> Therefore, when women succeed, the world succeeds, and it is thus imperative that steps be taken to help women gain equality in the workforce. This can be done in a few clear ways.

First, the United Nations should amend its "United Nation Convention on the Elimination of All Forms of Discrimination against Women."<sup>303</sup> It should be updated to include information about hiring practices and wages. Specifically, the convention should outline how employers should screen candidates in a non-discriminatory way (i.e. ensuring sex is not considered).

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295. *Gender Equality and Women's Empowerment*, USAID (Nov. 8, 2017), <https://www.usaid.gov/what-we-do/gender-equality-and-womens-empowerment> [<https://perma.cc/DP6M-NCAM>].

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

303. *See supra* Section III.A.

It should also be modified to not only mandate equal pay for men and women (equal pay for equal work), but also create repercussions for countries that do not take steps to ensure that equal pay is actually happening. Countries need to penalize employers that pay men and women differently, and if the country is a member of the United Nations, failure to do so should lead to larger repercussions on the international stage. It dramatically affects our global economy when women do not get paid equally to men, and as such, the United Nations must take action to protect and promote economic success in the world.

This is the first step towards achieving a “gold standard” for individual countries to follow. Once the United Nations does this, other countries will be more willing to pass their own laws, laws that not only meet the minimum standards but go above and beyond the standards put into place by the United Nations. Additionally, the member states of the United Nations, all 193 of them, will be forced to accept the updated resolution and put into effect initiatives to aid equality between the sexes.

Second, all countries should implement family leave laws similar to those in Iceland and Rwanda. In Iceland and Rwanda, paid maternity leave is available to all mothers. In Iceland, paid paternity leave is also available. The accessibility of this leave allows for family planning and limits the impact motherhood has on a women’s career. Specifically, countries should ensure that both mothers and fathers get three months paid family leave. Countries should not implement laws similar to Iceland, where three additional months are provided to parents, and the mother and father can divide the time up how they see fit. Instead, countries should provide both fathers and mothers the exact same amount of time of paid leave, to truly ensure that any employer hiring either a man or woman, knows they will take the same amount of time of leave. Over time, this amount of leave should be increased from six months divided by the two parents, to nine months in 2030 and to one year by 2040. Allowing both parents to take leave not only prevents harm to the mother’s career, but also allows both parents to spend quality time with the child during crucial developmental stages which can be extremely impactful on the child’s life.

Third, all countries should implement employment related affirmative action laws, to ensure that a percentage of government seats and positions at the top echelons of professional fields are filled with women. In both Iceland and Rwanda, we see better representation of women in roles previously typically held by men. Putting women in these roles not only leads to more gender equality laws being passed, but it also ensures that women get a seat at the table in major decision-making positions. When women serve in the top echelons of professional industries, the higher pay follows. Putting women in these roles can help close the gap. While this cannot be achieved over night, it can be accomplished by slowly implementing these quotas

with realistic goal dates, like per say, 2030. Countries should aim to reach 10% by 2020, 25% by 2025 and then 50% by 2030. Splitting it up in this way makes it more achievable for countries to reach these goals. Additionally, states should ensure that these quotas include not only white women, but also minorities. Representation for minority women in government and business is even worse than for white women, and this must be considered when creating these new laws.

By updating the “United Nation Convention on the Elimination of All Forms of Discrimination against Women” to include employment practices, and by countries implementing family leave and employment affirmative action legislation, we will be closer to a gender equal world. While the family leave and employment affirmative action legislation is aspirational, the United Nations must first take action to modify its convention in order to ensure that countries are held accountable for gender equality in employment.

Critics do exist—for both paid family leave and affirmative action employment laws. However, Iceland and Rwanda’s success with these laws cannot be denied. Much of the criticism of these new laws are often rooted in sexism and discrimination, which is the problem. We can say we want equality in the workplace, but in order to do that, control and power needs to be taken from one sex, and evenly distributed to both sexes. That’s easier said than done. Most people do not voluntarily give up control, but rather grasp at it like straws—hoping not to lose even one.

Sadly, few want to admit that both conscious and subconscious biases exist that a women’s place *is* in the home—caring for the children and tending over supper. Far from work. Far from the boardroom. Far from the government seats across the world. Those who do admit of this preference, reminisce to a simpler time, when “Honey, I’m home!—is that meatloaf I smell?” did not highlight a divide between the sexes, but rather highlighted capitalism and industrialization of the new world after World War II.

It is not easy to change societal or global norms and in order to do so, men need to have an active role in helping women reach equality. Yes, that requires relinquishing some control and power, but, men and the world will benefit from this. When both men and women are successful, families as a whole are successful, rather than one spouse. If men have a larger role in caretaking, women will suffer less of a motherhood penalty. Why? Because if everyone is responsible for childcare, then women cannot be punished for it. When both mothers and fathers leave for a parent-teacher conference or a doctor’s appointment, employers do not view it as a detriment.

Change is possible, but it is a group effort. When women have equality, men benefit. When men have a larger role in caregiving and housekeeping, children benefit. It's a cycle—children see equality in the home, and thus believe that equality belongs at work.

A women's success impacts the success of society, the economy, and politics. Steps must be taken in order to ensure equality in pay for men and women and a failure to do so will not only hurt women, but the world, too.