

The Daily Dish

Equal Pay for Equal Work

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Eakinomics: Equal Pay for Equal Work

Senator and presidential contender Kamala Harris drew attention yesterday with the announcement of her plan to eliminate the gender wage gap. According to her website: "In America today, women who work full time are paid just 80 cents, on average, for every dollar paid to men." While her proposal is entitled "Holding Corporations Accountable for Pay Inequality in America," we can presume that she believes that businesses (not just corporations) are not treating women fairly.

But just to be clear, discrimination on the basis of gender is already illegal, a violation of the Equal Pay Act. More generally, the Equal Employment Opportunity Commission (EEOC) points out that "Title VII [of the Civil Rights Act of 1064], the ADEA [The Age Discrimination in Employment Act of 1967], and the ADA [The Americans With Disabilities Act] prohibit compensation discrimination on the basis of race, color, religion, sex, national origin, age, or disability." There is clear, broad agreement that discrimination is not ok. The question therefore is, what is different about Harris's proposal that will reduce pay discrimination?

There are several key aspects of the proposal:

1. Firms are guilty until proven innocent. Specifically, "Companies will be required to obtain an 'Equal Pay Certification' and prove they're not paying women less than men for work of equal value."

2. Certification has two components. First, "To receive certification, companies must demonstrate they have eliminated pay disparities between women and men who are doing work of equal value." Second, "They will also be required to report the overall pay and total compensation gap that exists between men and women, regardless of job titles, experience, and performance. These statistics will be reported by employees' race and ethnicity."

3. The system will be enforced with a fine. “This fine will be assessed based on a company’s average wage gap for work of equal value. For every 1% gap that exists after accounting for differences in job titles, experience, and performance, companies will be fined at 1% of their average daily profits during the last fiscal year. We estimate the plan will generate roughly $180 billion over 10 years.”

4. This approach is supposed to be better than the status quo because “individual cases of discrimination go unnoticed or are too difficult or expensive to prove in court, and workers face increasingly high barriers in banding together to prove their claims.” But tossing aside the tradition of presumed innocence is a radical change, and a precedent that should not be set lightly. Moreover, it is not obvious that this system makes it easier to prove discrimination. Notice that the key change is work of “equal value.” That is a very slippery concept and I can imagine an enormous amount of litigation failing to establish a clear notion of equal value. Moreover, the fine is levied on the difference “after differences in job titles, experience, and performance” are accounted for, which seems like enough statistical wiggle room to drive a truck through.

5. There are big gaps in protection under the proposal. It is limited to firms of 100 employees or more, so it affects only 2.46 percent of all firms (as of 2018), since the remainder have fewer than 100 employees. It would cover less than two-thirds of all private sector employees and no government employees at all.

6. Harris emphasizes that she does not need Congress to act; she can require this sort of certification for government contractors using executive orders. That is true enough, but hardly something to be admired. Presidents Obama and Trump have pursued this approach; it is time to return to the practice of working for the bipartisan consensus needed to pass legislation. Focusing what is supposed to be a broad policy initiative solely on those doing business with the government does not accomplish the goal and makes the government less flexible and more costly.

One cannot object to the Harris campaign restating America’s commitment to equal pay for equal work. But one can raise serious questions about whether this policy is the right approach to reach that goal.