Momentum Builds for Legislation to Assure Equal Pay for Equal Work

The recent World Cup victory by the U.S. Women’s National Soccer Team has refocused attention on the persistent and pernicious problem of gender-based wage discrimination. More than half a century after the Equal Pay Act was enacted to “prohibit discrimination on account of sex in the payment of wages by employers,” women, working full-time and year-round, earn on average 80 cents for every dollar earned by men. And, in the rarified world of professional sports, pay discrimination is much worse. According to women athletes, the U.S. Soccer Federation pays women just 38 cents for every dollar paid to their male counterparts.

Even though concern over paycheck discrimination is not new, and members of the women’s soccer team filed their initial discrimination complaint against the U.S. Soccer Federation in 2016, it took fans chanting “equal pay” during the recent World Cup games to rally the public and animate legislators at both the state and federal level to take action.

On July 10, the day of the New York City parade in honor of their victory, Governor Cuomo signed bills guaranteeing that those working in New York have the right to equal pay and barring businesses from asking potential employees about their salary history, thereby preventing prior wage history from being used to justify paying less to women for comparable work.

On the same day, Senators Dianne Feinstein (D-CA) and Patty Murray (D-WA) introduced the Athletics Fair Pay Act, a bill to require equal pay and compensation for all Olympic and amateur athletes.

While female athletes frequently receive significantly less pay than their male counterparts, women throughout the workforce often are subject to gender-based wage discrimination regardless of their career choice or the state in which they live. Advocates hope that public outrage over disparities in athletes’ salaries will be enough to revitalize efforts to enact the Paycheck Fairness Act, broad remedial legislation that is vigorously supported by the ABA.

Originally introduced decades ago, the Paycheck Fairness Act was most recently introduced at the start of the 116th Congress as H.R. 7 by Representative Rosa DeLauro (D-CT) and as S. 270 by Senator Patty Murray (Senator Feinstein is a cosponsor).
The sole purpose of the legislation is to update the Equal Pay Act, which has become outdated and ineffective, so that men and women have the tools to assert their legal right to equal pay for equal work. It would, among other things, require employers to demonstrate that pay disparities are based on legitimate, work-related factors; strengthen the remedies available under the Act; improve oversight and enforcement mechanisms; and prohibit retaliation for disclosure of salary information.

The House passed the Paycheck Fairness Act on March 28 by a vote of 242-187, with seven Republicans joining Democrats to pass the bill. The legislation has stalled in the Senate to date because the Majority Leader has declined to schedule a vote.

The ABA, which has a long history of opposing discrimination in the workplace, adopted policy specifically supporting the Paycheck Fairness Act in 2010. The ABA will consider adopting two supplemental polices during the upcoming 2019 Annual Meeting. Resolution 106 urges the employers in the legal profession to close the compensation gap between similarly situated men and women lawyers. Resolution 115B updates and expands the 2010 policy and urges Congress, the states, and territories to enact legislation that would provide stronger remedies and protections against pay discrimination on the basis of sex (including gender, gender identity, and gender expression), race, and ethnicity.

To learn more about legislative developments on paycheck fairness when they happen, follow us on Twitter @ABAGrassroots.
ABA Again Calls for an Independent Immigration Court

On July 11th, the ABA joined the American Immigration Lawyers Association, Federal Bar Association, and National Association of Immigration Judges in calling for the establishment of an independent immigration court.

Currently, immigration courts are part of the U.S. Department of Justice, and the judges in those courts are answerable to the U.S. Attorney General, who is also the nation’s chief prosecutor. In a joint letter to Congress, the four organizations note that this inherent conflict of interest means that immigration judges are “particularly vulnerable to political pressure and interference.” In addition to the structural issues, the letter said that problems have “resulted in a severe lack of public confidence in the system’s capacity to deliver just and fair decisions in a timely manner.”

The immigration courts issue life-altering decisions each day that may deprive individuals of their freedoms, separate families, and in the case of those seeking asylum may be literally a matter of life or death. Yet the system lacks the basic structural and procedural safeguards that we take for granted in other areas of our justice system. These structural and procedural issues have contributed to a historic backlog of approximately 900,000 cases even though in recent years Congress has added resources, including a sizable increase in the number of judges and support staff.

In 2006, the ABA specifically called for ensuring the neutrality and independence of immigration judges, and of any federal agency by which they are employed, so that they are not subject to the control of any executive branch cabinet officer. In 2010, the ABA Commission on Immigration partnered with the law firm of Arnold & Porter to undertake a multi-year study of the immigration removal adjudication system, resulting in a comprehensive report with more than 80 recommendations. It ultimately called for the creation of an independent Article I immigration court and the ABA adopted that recommendation.

The proposal to create an Article I court to replace the current immigration adjudication system is not new or novel. In 1981, the congressionally-created Select Commission on Immigration and Refugee Policy made such a recommendation in its final report. In addition, several bills were introduced in the House of Representatives by former Congressman Bill McCollum (R-FL) in the late 1990s. While no legislation is currently pending to restructure the court, the burgeoning crisis and need for reform has been a
subject of congressional attention in recent years. In April 2018, then-ABA President Hilarie Bass testified at a Senate Judiciary Committee hearing on strengthening and reforming the immigration court system, making the case for an independent Article I court.

Restructuring the immigration adjudication system into an Article I court is the best solution to promote independence, impartiality, efficiency and accountability. The ABA will continue to work individually and in collaboration with other stakeholders to achieve this goal.
A Look Ahead: The 116th Congress Post Recess

Following August Recess, the 116th Congress has several updated legislative priorities, with a series of key pieces of legislation to watch. Issues of interest to the ABA involve education, labor, and immigration.

Regarding education, three key bills already introduced in Congress will probably get attention soon. Of particular interest to the ABA is the What You Can Do For Your Country Act (S.1203/H.R.2241). This bill would allow borrowers of all federal loans to qualify for Public Service Loan Forgiveness (PSLF), as well as borrowers enrolled in any federal repayment plan. Under current law, borrowers enrolled in the extended or graduated repayment plans become ineligible.

For labor, there are also three bills that may get attention this fall. The Paycheck Fairness Act is of most interest to the ABA (H.R. 7/S. 270). This bill would ban employers from asking job candidates about their salaries at previous jobs, eliminate employer rules that
ABA Governmental Affairs Office  

prohibit employees from discussing salary information, and require employers to share salary data with the Equal Employment Opportunity Commission.

### Legislation to watch: tax, labor, & economy

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<th>Bill</th>
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| **H.R. 7/S. 270: Paycheck Fairness Act**  
House sponsor: Rep. Rosa DeLauro (D-CT-3)  
Senate sponsor: Sen. Patty Murray (D-WA)  
Attempts to narrow the gender pay gap by:  
- Banning employers from asking job candidates about their salaries at previous jobs  
- Eliminating employer rules that prohibit employees from discussing salary information  
- Requiring employers to share salary data with the Equal Employment Opportunity Commission |
| **H.R. 695/S. 249: PACE Act**  
House sponsor: Rep. Stephanie Murphy (D-FL-7)  
Senate sponsor: Sen. Angus King (I-ME)  
- Makes the Child and Dependent Care Tax Credit (CDCTC) fully refundable, increases its amount, and introduces adjustments for inflation |
| **H.R. 582/S. 150: Raise the Wage Act**  
House sponsor: Rep. Bobby Scott (D-VA-3)  
Senate sponsor: Sen. Bernie Sanders (I-VT)  
- Increases the federal minimum wage to $15/hour over a period of six years  
- Phases out the subminimum wage for tipped workers |

Congress has also been working on several bills involving immigration matters. The Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act (H.R. 3401) was signed into law on July 1st and provides much needed funding for humanitarian services and security at the border, including funding for the Legal Orientation Program training. The Fairness for High-Skilled Immigrants Act (H.R. 1044) would increase the per-country cap on family-based immigration visas and eliminate the per-country cap for employment-based visas. The House has already passed this bill with a strong bipartisan vote (224 Ds; 140 Rs; 1 Independent), but the Senate has taken no action on it. The Senate has also not acted on a bill introduced earlier this year by the Chairman of the Senate Judiciary Committee that would provide provisional protected status for DACA recipients and provide additional funding for border security (S.166). With increasing scrutiny on immigration issues at the U.S. borders, we expect immigration to continue to merit congressional attention this fall.
In addition to the bills mentioned above, the House intends to continue advocating for changes to voting rights, campaign finance, and background checks for gun purchases. Pending bills include H.R. 1, the For the People Act of 2019, which would expand Americans’ access to the ballot box, and H.R. 8, the Bipartisan Background Checks Act of 2019, which would require universal background checks preceding commercial gun sales and close the loopholes left open by current laws. The Senate will continue to focus on judicial confirmations and consider climate change, including S.J. Res. 8, which is a joint resolution recognizing the duty of the Federal Government to create a Green New Deal that would achieve net-zero greenhouse gas emissions, invest in infrastructure, and more, over ten years.
To keep up with legislation as it moves through Congress, visit our resources page on the Grassroots Action Center.
This August, the Governmental Affairs Office (GAO) will join thousands of attorneys at the ABA Annual Meeting in San Francisco, CA to discuss policy matters potentially impacting the legal profession, now and in the future. GAO will meet with ABA entities and members to discuss current federal topics, relay the latest updates from Capitol Hill, and show legal professionals of all backgrounds how they can make the most impact in their environment.

As the eyes and ears of the legal profession in Washington, the GAO team attends the ABA Annual Meeting to update members and gain policy insights on what’s important to them to help inform the ABA’s advocacy efforts. This year, we are excited to increase GAO’s visibility at the meeting to show as many legal professionals as possible how they can get involved in current advocacy campaigns and have their voice heard on Capitol Hill.

We will have several new opportunities for ABA members to meet with members of the GAO team, both in person and online. For example, we have a new ‘pop-up’ style information center that will be positioned at relevant events during the meeting. The pop-up will include at least one member of the GAO team and feature a bank of tablets to highlight new GAO advocacy tools that members can use to improve their skills. Visitors will be able to work personally with our staff to learn how to do things in their spare time to meaningfully take action and how to stay informed on the issues facing the profession. Come lend your voice to amplify the ABA’s advocacy and make a genuine difference in the process.

Of course, sometimes the best way to get up to speed on the issues is by grabbing a policy expert and diving in. Many of the GAO team will be traveling to San Francisco with the main goal of connecting with members and updating relevant entities on the latest developments from Capitol Hill. On August 9th, GAO will be part of a panel discussion with the Law Library of Congress to teach members how to conduct legislative research and to use that information effectively in their advocacy work. Among other events, GAO will also be present during meetings held by:

*The Criminal Justice Section; Health Law Section; Section of Environment, Energy, and Resources (SEER); Section of Intellectual Property Law; Business Law Section; Dispute Resolution Section; Young Lawyers Division; Judicial Division; General Practice and Solo and Small Firm Division; Standing Committee on Legal Aid and Indigent Defendants; Standing Committee on Natural Disaster and Preparedness; Standing Committee on Armed Forces Law; Cybersecurity Legal Task Force; Commission on Immigration; Commission on Homelessness*
and Poverty; ABA Coordinating Committee on Veterans Benefits and Services; and the IOLTA Commission.

We look forward to seeing ABA members and guests at these and other events in San Francisco. We will also be engaging with members from around the country on social media all week long. Follow us on Twitter (@ABAGrassroots) to get the latest updates from the event, and stay tuned to our Social Media Center for more details and ways you can get involved remotely, including a campaign aimed at the federal officials traveling back to their home districts for August Recess.

Need to find a GAO staff member or want to visit a GAO pop up site at Annual? Please contact GAO’s Director of Grassroots & Digital Advocacy Eric Storey at eric.storey@americanbar.org for more information or assistance.
July 17, 2019

Legal Education Advocates Seek Data & Stories About Public Service Loan Forgiveness

Much of the advocacy for legal education centers around student loans and specifically loan forgiveness given to those who serve the public. This advocacy uses data and stories to inform Congress and the Administration of the importance of the loan forgiveness program. We need your help!

The Public Service Loan Forgiveness (PSLF) program offers partial student loan forgiveness in exchange for a service commitment of at least 10 years. Borrowers must be in qualifying jobs, have qualifying federal Direct Loans, be in a qualifying repayment plan, and make a decade of timely payments.

Congress and President George W. Bush created the PSLF program in 2007. Because PSLF necessitates a serious commitment to a decade of public service and 120 on-time loan repayments, actual loan forgiveness under the program was not available until after October 2017.

Less than a year before forgiveness became available—before any statistics were even available regarding program performance—PSLF came under attack.

The attack has taken several forms:

- First, President Barack Obama sought to cut the program dramatically.
- Second, President Trump sought to eliminate the program.
- Third, in 2018 then-U.S. House Education & the Workforce Committee Chair Virginia Foxx attempted to move legislation through her committee that would have ended the program.
- Fourth, in 2019 the U.S. Senate Health, Education, Labor & Pensions Committee is seeking to end the program in discussions about reauthorization of the Higher Education Act.
The ABA is now crowd-sourcing data collection with our partners in the Coalition to Preserve PSLF. Our coalition includes nurses, teachers, veterinarians, social workers, first responders, doctors, food safety professionals, special education professionals, police and corrections officers, and more. We are all doing our part to obtain data on PSLF. For example, our ally the National Legal Aid and Defender Association polled its membership and received 3,369 responses. Now it is our turn.

With a membership of over 400,000, the American Bar Association, one of the world's largest professional associations, seeks a robust response to this survey from legal professionals. Your help is critical. The survey is only about 20 questions and is written to be taken with ease.

Billions of dollars are at stake in the coming decade. This data collection is critical to our advocacy.

In addition to the data, the final step is the individual stories of lawyers. Stories are particularly effective with Members of Congress and the Administration. If you are willing to be contacted about your experience with PSLF, our profession and many others would be grateful. Please click here to take the quick survey.
Still Searching for Answers: Civil Rights Cold Cases

The Civil Rights movement started more than seventy years ago as a nonviolent effort to end racial discrimination. Years of marches, demonstrations, speeches, and advocacy ultimately led to laws ending school segregation, employment and housing discrimination, and interference with voting rights based on race. The journey to these developments was not always smooth, however, and despite peaceful motives, civil rights efforts too often resulted in violence and criminal misconduct. Many criminal cases were never prosecuted and families of the victims are still waiting for details about why not and what happened.

Thanks to years of advocacy by students from Hightstown High School, the families of the victims in these cases are one step closer to getting more details, albeit decades after the fact. At the end of the 115th Congress, both the House of Representatives and the Senate passed the Civil Rights Cold Case Records Collection Act of 2018. Hightstown students drafted this bill using language from a similar bill passed in 1992 to force the collection and ultimate release of records from the JFK assassination. Congress embraced this new bipartisan bill designed to expeditiously disclose records related to civil rights cold cases as one of its last successful votes before closing the 115th Congress. President Trump signed the bill into law on January 8, 2019 (Public Law No. 115-426).

Passing the law was a critical step, but more legislative and executive branch action is needed. The law tasks the Archivist at the National Archives with creating a “Civil Rights Cold Case Records Collection” that ensures the physical integrity of these records and coordinating the disclosure process with other federal agencies. The Act also creates a “Civil Rights Cold Case Records Review Board” to facilitate the review of cold cases, transmission of them to the Archivist, and potential disclosure to the public. The Act does not provide funding for these efforts, but that should change soon.

On June 16, 2019, the House passed an appropriations bill that includes over $4 million to fund the National Archives and creation of the Records Review Board (H.R. 3351). The Senate is expected to consider an appropriations bill soon.
In the meantime, the Act tasks the President with appointing, with the advice and consent of the Senate, five individuals to serve as members of the Board, one of whom must be a historian and one an attorney. The President may consider individuals recommended by the American Historical Association, the Organization of American Historians, the Society of American Archivists, and the American Bar Association. Last month, the ABA Board of Governors approved submitting nominees to serve on the Review Board and, by the end of this month, the White House will have nominees from all four associations to consider.

Clearly more work needs to be done before families or the public learn more about cold cases from the Civil Rights movement, but passage of the Act is an important step and we expect more positive steps to occur soon. To get updates on this issue, follow us @ABAGrassroots.
Are you an attorney who wants to get involved at the border? The ABA offers ways to do it

This article was originally published on July 3rd, 2019 in the ABA Journal. Click here to see the original.

In May, Jim Pauli joined several attorney volunteers in assisting asylum-seekers through the ABA’s South Texas Pro Bono Asylum Representation Project in Harlingen, Texas.

Pauli wanted to understand what was happening at the border and help people fleeing violence and persecution—like the Eritrean man who told him he was forced to join the military and imprisoned when he requested to leave after 19 years of service. He was tortured after he escaped. Last week, he heard the man was granted asylum.

“There are many people with worthy cases and we're helping those people,” says Pauli, a member of the ABA Fund for Justice and Education council and the ABA Judicial Division's Lawyers Conference executive committee. “We’re helping people who are trying to have a better life, and as the ABA, we’re helping to ensure that the rule of law is followed.”

The ABA Commission on Immigration offers several opportunities to members like Pauli who want to help at the border, including through ProBAR, which provides legal information, pro se assistance and pro bono representation to adults and unaccompanied children in immigration detention.

ProBAR is currently looking for Spanish-speaking attorneys to volunteer for an extended period of one month or more, as well as attorneys who can represent clients in removal proceedings and be physically present at all meetings and hearings.

Attorneys can also volunteer with the commission’s Immigration Justice Project. It provides pro bono legal services to indigent immigrants and asylum-seekers who appear before the San Diego immigration court and in appeals.

The 2019 weeklong volunteer trips are full, but attorneys can ask to be placed on the waiting list or volunteer on their own time.
ABA Governmental Affairs Office
The Washington Letter, July 2019 Edition

The Commission on Immigration has sponsored the hotline for detainees since 2002. The number is programmed into the free calling list and posted next to telephones in more than 200 Immigration and Customs Enforcement facilities where people wait for immigration proceedings.

Law clerks and interns—which include law students, recent law school graduates, undergraduates and occasionally lawyers—answer calls and provide detainees with information on how the immigration court system works and what legal relief is available.

For pro bono attorneys and legal services providers who represent children in immigration proceedings in Texas, the Commission on Immigration offers the Children’s Immigration Law Academy. It is based in Houston and provides training, technical assistance and collaboration opportunities.

The ABA is also accepting donations to support free legal services at the border through its Working Group on Unaccompanied Minor Immigrants and Migrant Children and Family Initiative. The most up-to-date resources from across the ABA can be found at ambar.org/migrantjustice.

OTHER WAYS TO HELP

In addition to the ABA’s initiatives, attorneys can look for opportunities with these organizations:

• Refugee and Immigrant Center for Education and Legal Services is a nonprofit in Texas that provides free and low-cost legal services to immigrant children, families and refugees. (Its Twitter account, @RAICESTEXAS was featured in the ABA Journal’s 2018 Web 100.)

• Kids in Need of Defense is a nonprofit in Washington, D.C., that represents unaccompanied immigrant and refugee children in their deportation proceedings. (The ABA Solo, Small Firm and General Practice Division partnered with KIND to train volunteer attorneys to represent unaccompanied children.)

• Florence Immigrant & Refugee Rights Project is a nonprofit in Arizona that provides free legal services to men, women and children in immigration custody.

• Las Americas is a nonprofit in El Paso, Texas, that provides free legal services to detained immigrants and refugees.

The Commission on Immigration also provides a list of immigration advocacy organizations for interested attorneys.

See also:
ABA Journal: “$150,000 grant will bolster ABA’s pro bono immigration work”

ABA Journal: “ABA teams up with J.K. Rowling foundation to provide social workers to immigrant children”

ABA Journal: “Want to help at the border? ABA groups offer avenues to donate time and money”