



Navigating the New Massachusetts Equal Pay Act

Today's Presenter

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PRESENT ECONOMIC STATUS OF WOMEN

New Opportunities Thrown Open to Them by the War—They Have Won Equal Pay—Movement to Oust Male Industrial Slackers

WOMEN workers are to be marshaled to shame men who dodge essential duties. Lists of occupations in which men should be replaced by women are to be published in the daily papers, with the implication that men who persist in remaining in them will be confessed industrial slackers.

These are the most radical features of the new plan of the United States Employment Service, designed to bring into the war industries large numbers of men now engaged in non-essential industries and needed for carrying out the new war program of an army of 1,000,000 men. The drastic aim deemed necessary by the labor situation is that a man shall occupy a position that a woman can fill.

Certain employments, after investigation by community labor boards, will be officially noted as "woman's work." The lists will be progressive in character; new occupations will be added to the published lists as new facts and new emergencies develop. The motive force is applied upon men to relinquish non-essential employments for the war industries will be, as the plan of publicity indicates, the pressure of public opinion, believed by the promoters of the plan to be the strongest force that could be appealed to in the present national determination to see the war through to a finish.

With more and more directness, as the campaign unfolds, attention will be focused on men who are working at jobs that women might do.

"It should be understood that this plan will be put into effect in no haphazard fashion," said N. A. Smyth, Assistant Director of the United States Employment Service in Washington, the other day, "but only after careful investigations conducted in a friendly spirit and with special precautions not to inflict injustice on any one, but the fact is that there is an alarming shortage of man power in the war industries. This made necessary the carrying out of this program.

made, the great call is about to be made. This, as pointing to the place of women in this country in the future, brings into new importance the questions as to what women have accomplished in the war thus far, what new occupations have been opened to them, what new rights as workers by the side of men have been accorded them, what economic gains have been won by them. As to economic gains, here is a table showing changes in woman's wages in

OUTPUT OF WOMEN
as compared with output of men in similar work, by industries.
(Compiled by National Industrial Conference Board.)

Classification of Establishments	Total No. of Establishments	Greater in Operations	Equal in Operations	Less in Operations	Not Compared or Not Stated
Manufacturing	1,000,000	500,000	300,000	200,000	100,000
Transportation	500,000	250,000	150,000	100,000	50,000
Commerce	200,000	100,000	50,000	50,000	20,000
Government	100,000	50,000	20,000	30,000	10,000
Education	50,000	20,000	10,000	10,000	5,000
Health	50,000	20,000	10,000	10,000	5,000
Other	50,000	20,000	10,000	10,000	5,000

"If it shall become necessary to employ women on work ordinarily performed by men, they must be allowed equal pay for equal work."

These increases are considered fairly typical throughout war industries in which women are employed. Miss Marie L. Obenauer, Chief Woman Examiner of the National War Labor Board at Washington, considered an authority on the subject of women employment, estimates the increase in women's wages in manufacturing war industries since 1915 to range between 50 and 100 per cent. But this advance refers only to employments in which women were engaged as ma-

WAGE RATES OF WOMEN
as compared with rates to men by industries.
(Compiled by National Industrial Conference Board.)

Classification of	Wage Rates of Women		Not Compared or Not Stated
	Total No. of Establishments	Equal to Men	
Manufacturing	1,000,000	500,000	100,000
Transportation	500,000	250,000	50,000
Commerce	200,000	100,000	20,000
Government	100,000	50,000	10,000
Education	50,000	20,000	5,000
Health	50,000	20,000	5,000
Other	50,000	20,000	5,000

chine workers and a main concern, as expressed by some of the writers, was that the admission of women to the new and better paid occupations would deter them, in greater numbers, from marrying or consenting to bear children and thus have a tendency to lower the birth rate in France. The views of writers who hold this opinion seem far-fetched to some persons in this country.

What is the attitude of employers to the new principle? That has not yet received a general expression of opinion. The National Industrial Conference Board on "Wartime Employment of Women in the Metal Trades" in its most recent research report says: "The principle of equal wages for equal work has found fairly general acceptance among employers in the metal trades." As to the attitude of men workers, this report says: "A large number of employers reported quiet acquiescence or even friendly co-operation of their men. A munition plant employing 694 women found that the male workers in the establishment

experience of employers in the metal trades in the United States has clearly demonstrated the practicability of employing women in a large variety of manufacturing operations. . . . In reviewing the record of efficient performance by women it must be emphasized that most of the tasks in which they are engaged are semi-skilled work of a repetitive character in which rapidity, lightness of touch and natural dexterity are more important than skill acquired through long training and experience. It is too early to form conclusions as to the ability of women to perform work of higher skill. The necessity for immediate increase of output made it essential to give women specialized training for particular jobs rather than to develop them into general mechanics. Even in England, where in one place or another women are used in practically all operations in the engineering and munitions trades, they have not received the broad training which skilled workmen receive."

munerative. The vacant clerical positions had to be filled, but, in a considerable degree, this was done by shifting. The pay of women in city clerical positions was a strong inducement to country school teachers, and, according to an authoritative statement, 100,000 school teachers have left their schools for new employment. Many nurses also shifted over to new work.

From the time of our entry into the war this transfer to better paid employment has been continuing.

100,000 on certain known increments; for the 12 months the rate of influx has been shifting rapidly, and with the demands for women workers this aim to continue." Miss Obenauer thinks the increase in clerical work since the beginning of 1915 is about 500,000. Double what it was in 1910, it makes a total gain of new workers in these two fields of about 1,000,000. The total number of women in employments in this country at the end of 1917 was 12,000,000 and 12,000,000 in the summary of vari-

many more women will be needed when an army of 5,000,000 is in training? Her experts on these matters at the upper end say not 1,000,000. Miss Obenauer thinks 1,000,000 will be all it is necessary

my opinion," she said, "it will be required for every man who goes into the field. On the estimate of the State United States Chamber of Commerce that four workers will be required for every man in the field, providing the supplies for the equivalent of the other 100,000,000 men, it is my opinion that the conservation of skill, the use of men unfit for military service, the elimination of non-essential industries, and the adaptation of industries possible to war are the use of labor-saving machinery.

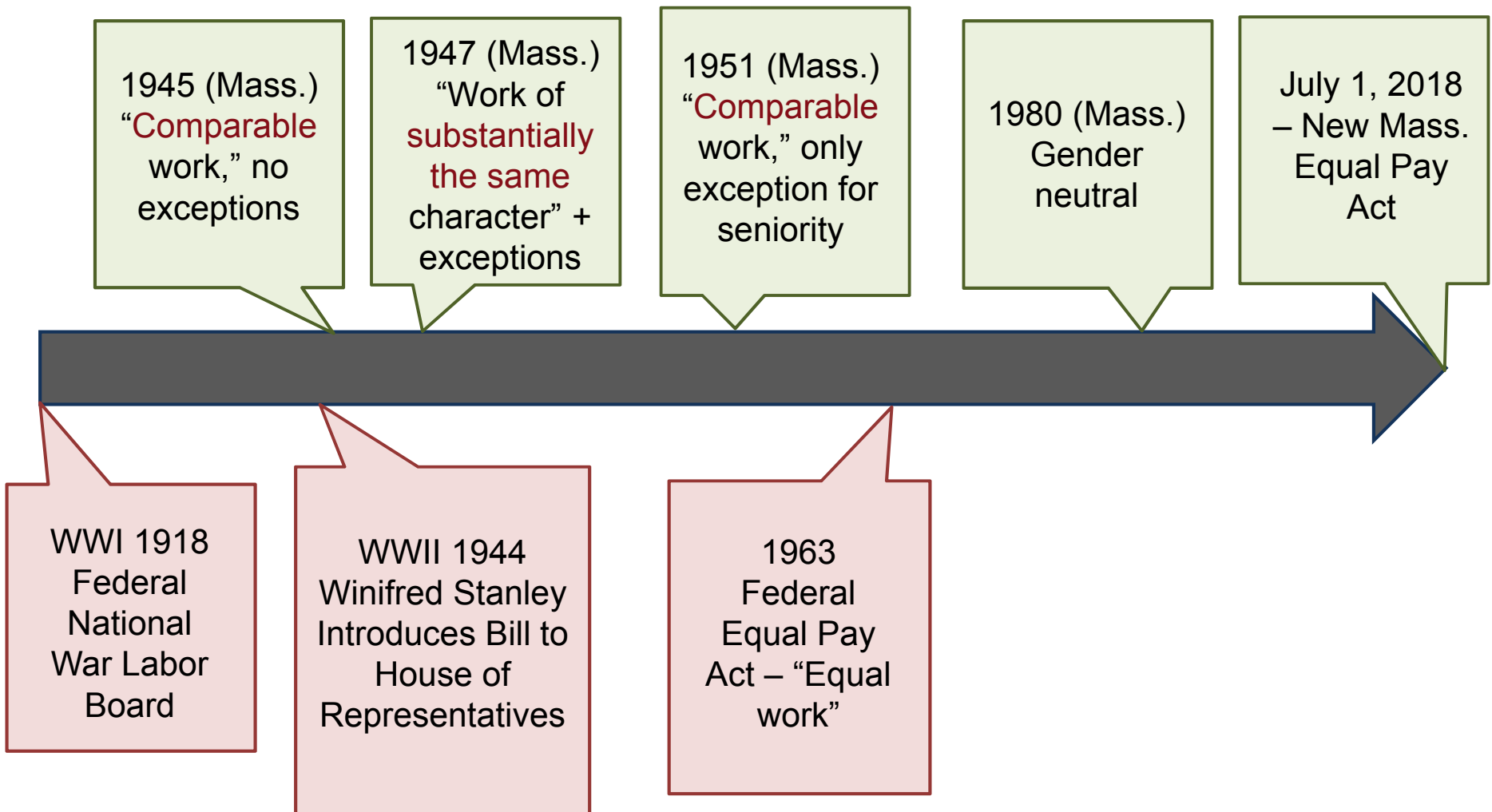
Where will the women, certainly to be less than 2,000,000 from? The largest reservoir is drawn upon with the least difficulty to domestic life are women gainfully employed who are unemployed at the head of a household. This class of women in 1910 numbered 2,000,000 in the United States, the ages of 16 and 45. Some were still in school, but the number compared with the total, was 10 per cent. It is from this class chiefly that women workers have been drawn there is undoubtedly still a surplus of leisure, economically indigent. But among the leaders of women workers there is strong opinion that the drafting of the men to the country to meet the war needs

ATTENDANCE AT WORK
of married women as compared with attendance of unmarried women and men.
(Compiled by National Industrial Conference Board.)

Classification of Establishments	Number of women	Number of married women	Per cent. of married women to total number of women	
				Number of men
Women's attendance better than men's	33	4,967	575	11.6
Women's attendance equal to men's	99	9,400	719	7.6

Equal Pay Timeline

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G. L. c.149, §105A (eff. July 1, 2018)

“No employer shall discriminate in any way on the basis of gender in the pay of wages, or pay any person in its employ a salary or wage rate less than the rates paid to its employees of a different gender for **comparable work.**”

“Comparable Work”

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“Substantially Similar”

“Alike to a great or significant extent, but not necessarily identical or alike in all respects”

“Skill”

“Factors such as experience, training, education, and ability required to perform the job”

“[W]ork that is **substantially similar** in that it requires **substantially similar skill, effort,** and **responsibility** and is performed under similar **working conditions.**”

“Effort”

“The amount of physical or mental exertion needed to perform a job”

“Responsibility”

“The degree of discretion or accountability involved in performing the essential functions of the job, as well as the duties regularly required to be performed for the job”

“Working Conditions”

“Factors such as the physical surroundings and hazards encountered by employees performing the job”

Custodian vs. Cafeteria Worker

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	Custodian	Cafeteria Worker
Skill	No education or experience necessary	No education or experience necessary
Effort	High physical exertion required (e.g., taking out trash)	High physical exertion required (e.g., carrying food boxes)
Responsibility	Low level of discretion; highly supervised	Low level of discretion; highly supervised
Working Conditions	Night shift v. day shift	Day shift

Practice Tip: job titles alone are not sufficient to determine comparability

Practice Tip: update your job descriptions

HR Director vs. Executive Assistant

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	HR Director	Executive Assistant
Skill	Bachelor's degree or several years of experience	Bachelor's degree or little experience
Effort	High mental exertion ; low physical exertion	Mid-level mental exertion ; low physical exertion
Responsibility	Creates policies ; exercises discretion; supervisory	Highly supervised ; no discretion
Working Conditions	Office day shift	Office day shift

Practice Tip: job titles alone are not sufficient to determine comparability

Practice Tip: update your job descriptions

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Wages

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- All forms of remuneration – not just salary
- Car and gas allowances, PTO, retirement plans, company cellphones

Practice Tip: cannot lower wages to equalize

Practice Tip: cannot make up lower wages with larger benefits

Exceptions

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Pay may vary for comparable work if based upon:

- ❑ System that rewards seniority
- ❑ Merit system
- ❑ System which measures earnings by quantity or quality of production, sales, or revenue
- ❑ Geographic location
- ❑ Education, training, or experience
- ❑ Travel

“System”

“A plan, policy, or practice that is predetermined or predefined; used by managers or others to make compensation decisions; and uniformly applied in good faith without regard to gender”

Practice Tip: conduct and document regular performance reviews

Anything Else I Need To Know?

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- Increases statute of limitations
- Abandons MCAD requirements
- Prohibits employer from limiting employee's ability to discuss wages
- Prohibits employer from seeking wage or salary history before formal offer made

Practice Tip: revise application; review interview materials; reference check materials; remove inquires regarding wage and salary

Next Step: Self-Evaluation

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- **How**
 - Group by comparability
 - Determine if pay disparity exists within comparable groups
 - Where disparities identified, determine whether exceptions apply
 - Must be made in **good faith**
 - Must be **reasonable in detail and scope**
 - Must be within 3 years of claim and be able to demonstrate **reasonable progress**
 - Work with attorney to protect by attorney-client privilege
- **Why**
 - Risk: double damages + attorneys' costs & fees
 - Affirmative defense to MA Equal Pay Act and Chapter 151B claims

Practice tip: document steps taken to eliminate pay disparities

Practice tip: take remedial action ASAP, and no later than 6 months after evaluation

Questions?

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	Standard	Exceptions	Damages	AG jurisdiction	SOL	MCAD prerequisite
Old	“Work of comparable character or work on like or comparable operations”	Seniority	Unpaid wages x 2 + reasonable attorneys’ fees & costs	Yes	1 yr.	Yes
New	“Comparable work”	Seniority, merit, quantity/quality, location, education/training, travel	Unpaid wages x 2 + reasonable attorneys’ fees & costs	Yes	3 yrs.	No

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Thank you!

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