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H.R. 3008: MISLEADING ADVERTISING FOR COMPARABLE WORTH

INTRODUCTION

Congress will soon consider yet another comparable worth bill introduced by Representative Mary Rose Oakar (D-OH). H.R. 3008 is scheduled to be considered by the House Post Office and Civil Service Committee this week. It may be brought to the floor of the House before the August recess.

As in its earlier incarnations, the current bill nowhere uses the term "comparable worth"--tacit acknowledgment of the resistance such a bill would meet if the truth were made clear. Instead, it is deceptively entitled "a bill to promote equitable pay practices," as if laws mandating equal pay for equal work and making sex discrimination illegal were not already on the books. The bill also states an intent "to eliminate discrimination within the federal civil service," as if there were not already administrative procedures in place to correct instances of discrimination.

The fact is that this bill seeks to change existing law in a fundamental way. While seemingly calling for an innocent "study," it significantly redefines discrimination and alters the evidence needed to prove discrimination. The new definitions are based squarely on the theory of comparable worth, which claims that the value of different jobs can somehow be rated in an objective way. Supporters of the bill are already convinced that systemic discrimination against women exists in the federal civil service. Now they wish to give their assertions the force of law. Congress should recognize that this legislation is far more sweeping than its sponsors admit, and lawmakers thus should deliberate long and carefully before taking decisive action on the measure.

WHAT IS COMPARABLE WORTH?

Comparable worth is one of the most muddled and misunderstood issues ever considered by policy makers, thanks in large part to the deceptive advertising of its supporters. Sometimes billed as "pay equity," it actually goes far beyond equal pay for equal work and equal opportunity. Confusion is endemic to discussion of the subject. According to a General Accounting Office (GAO) report on the issue, for instance, "pay equity encompasses a broader concept than does comparable worth."[1] Yet a recent Washington Post editorial says pay equity is "a more limited definition of comparable worth."[2] And there is good reason to believe that when the House passed H.R. 5680, a comparable worth bill, last year, many members had no clear idea of what they were voting for. After all, they were assured by House Majority Leader Jim Wright (D-TX): "All of us at one time or another have endorsed the basic principle of equal pay for equal work....That is what this bill provides."[3] But what it really provided was something entirely different--legitimacy for the idea that equal pay should be provided for "comparable," or unequal, work.

The theory of comparable worth is based on three false premises:

FALSE PREMISE #1. There is such widespread discrimination against women and scorn for the value of their work in U.S. society that any job classification that is dominated by women is automatically undervalued and underpaid, and, therefore, equal-pay-for-equal-work legislation is insufficient to eliminate discrimination against women.

This ideological assertion flies in the face of simple economics. There is no way such artificial wage depression for women could occur without virtually universal collusion on the part of thousands of large and small employers across the country. Indeed, feminists provide no explanation of how this universal discriminatory process occurs. The "proof" for feminists is that women are clustered in certain occupations, and the pay in those occupations is generally lower than what the feminists think are "comparable" male-dominated jobs. But such comparisons of jobs must be subjective. Unless women are forcibly pushed into and kept in low-paying jobs, and not given

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1. General Accounting Office, Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems, March 1, 1985, p. ii.

2. The Washington Post, "Comparable Worth and the EEOC," June 24, 1985.

3. Congressional Record, House, June 28, 1984, p. H7321.

the opportunity to enter higher-paying occupations, the concentration of women in lower-paying occupations is not ipso facto proof of anything.

FALSE PREMISE #2. The "pay gap" -- the fact that full-time working women earn, on average, 64 cents for every dollar men earn, is evidence of the systemic discrimination against women assumed by the first false premise.

This statistic is very misleading. It compares annual full-time earnings, and is not adjusted for differences in hours worked. Since men tend, more than women, to work overtime or hold second jobs, comparing total earnings proves nothing. A comparison of average hourly pay is more meaningful, and that shows women earning an average 72 cents to the men's dollar. For younger groups, the ratio is higher: 89 cents for 20- to 24-year-olds and 80 cents for 25- to 34-year-olds.[4] In other words, existing legislation forbidding sex discrimination in employment has been highly effective.

Moreover, the remaining pay gap is dubious evidence of discrimination. Turnover rates, working conditions, job preferences, work experience, education, and skills are all part of the explanation for wage differentials. As a group (and the averages that show a pay gap are the result of group performance), women simply do not possess the collective work experience of men. Radical feminists may deplore the fact that the majority of women make the life and career decisions that they do--some attribute it to "sexist societal conditioning"--but women participate freely in this "conditioning" and make their own choices. The results cannot be blamed on employer discrimination.

FALSE PREMISE #3. A job evaluation comparison of two dissimilar jobs can yield an objective measure of the worth of these jobs to an employer.

All job evaluations are inherently subjective. Anything can be compared in a facile sense, even apples and oranges. But in comparing "duties, responsibilities, education requirements, and working conditions," the basis for establishing comparable worth, the result is invariably dependent on the evaluator's values (or the values of those who hired the person). Moreover, there is no objective means of weighing different skills or experiences. How many years of college education are worth the willingness to dig ditches in inclement weather? Job evaluations are widespread and can serve a useful purpose for both employers and employees as a guide for their subjective decisions. But nobody can deduce the money value of

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4. June O'Neill, "Statement at the Consultation on Comparable Worth at the Civil Rights Commission," June 7, 1984, p. 6.

particular jobs and thus conclude that a wage differential between two jobs is necessarily the result of discrimination.

PROVISIONS OF H.R. 3008

Section 2 of the "Federal Equitable Pay Practices Act of 1985" states that its purpose is "to determine whether the Government's position-classification system under chapter 51 of title 5, United States Code, and prevailing-rate system under subchapter IV of chapter 53 of such title, are designed and administered in a manner consistent with general policy...that sex, race and ethnicity should not be among the factors considered" in determining pay rates. The federal government's General Schedule (GS) pay rates are to be included as part of the systems to be evaluated.

Section 3 of the bill goes on to establish a Commission on Equitable Pay Practices, which is to be composed of the Comptroller General of the United States, the Director of the Office of Personnel Management, five members appointed by the President (two of them upon recommendation of the Speaker of the House and two of the Majority Leader of the Senate), and four members appointed by the Director of the Office of Personnel Management (OPM), two representing the two largest federal government labor organizations, one representing a federal women's employee organization, and one representing a minority employee organization. Section 4 defines the powers of the Commission, which include the following: to appoint and fix the pay of a director (within certain guidelines), procure expert advice, hold hearings, obtain information from federal agencies, and issue subpoenas.

The crux of the bill, however, is contained in Sections 6 and 7, which outline the study and reporting requirements for a consultant chosen by the Commission to conduct "a study under which job-content analysis and economic analysis shall be applied with respect to a representative sample of occupations in which either sex is numerically predominant, any race is disproportionately represented, or either ethnic group (sic) is disproportionately represented." Comparisons are to be made not only within each of the two classification systems to be studied, but also between them, "both on an intra-agency and inter-agency basis." The consultant's report is to provide the following information:

1) A list of occupations between which pay differentials were found when job evaluations of such occupations involving "skills, effort, responsibilities, qualification requirements, and working conditions which, while not identical, were equivalent in totality" (emphasis added).

2) The extent to which such differentials can be explained by job-content or economic analysis.

3) The extent to which they cannot be explained by job-content and economic analyses.

Finally, the bill states unequivocally that any unexplained differential "is inconsistent with the general policy expressed...that sex, race, and ethnicity should not be among the factors considered in determining any rate of pay." In other words, any pay differential the consultant does not explain will be ipso facto proof of discrimination. This goes beyond present law.

Section 10 provides an intriguing list of definitions. Among these is a definition of "ethnicity." According to the bill, this consists of "the quality of being, or not being, of Hispanic origin"--an interesting attempt to rewrite the dictionary for political purposes.

IMPLICATIONS OF H.R. 3008

The bill is clearly another attempt to pass a disguised comparable worth law without a full discussion on the floor of the Congress of the comparable worth theory. The bill calls for a study that would to try to compare two entirely different federal job classification systems. This will inevitably result in the comparison of the primarily female-dominated, low-level clerical positions in the General Schedule (GS) system with the predominately male blue-collar occupations in the Federal Wage System (FWS)--the quintessential comparable-worth situation.

If the bill is passed into law, any unexplained differential in pay between jobs an evaluator ranks as equal in points will become, by law, evidence of discrimination, even though the GAO study on which the bill's research design is based clearly states that the unexplained differentials its methodologies might identify "may or may not be attributable to discrimination."[5] The comparable worth concept also would be extended by the legislation to include not only women but racial and ethnic minorities--making the evaluation process impossibly complex.

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5. General Accounting Office, op. cit., p. 10.

CONCLUSION

Supporters of H.R. 3008 claim it only calls for a "study" of federal employees. Congress should remember that just such a well-intentioned "study" some ten years ago resulted in a court case and multimillion dollar back-pay judgment against Washington State that is still under appeal. The State was held to have subscribed to the job evaluator's judgments about the value of jobs simply by virtue of commissioning the study. Congress would invite similar court action by commissioning a federal study. But the Oakar bill goes much farther. The study design and the reporting format mandated by the bill would enact into law comparable worth definitions of discrimination, definitions specifically rejected by the Congress during floor debates prior to passage of the Equal Pay Act of 1963. That act endorsed equal pay for equal work, but its legislative history indicates a rejection of the murky concept of equal pay for work of comparable value.

It ill serves democracy and the cause of women in the U.S. to attempt such deceptive means of enacting comparable worth. If the supporters of comparable worth truly believe in the substance of the theory, they should write a bill that clearly states its true purpose. The issue then can be discussed openly and fully on the floor of the Congress. By talking smoothly only of "equitable" pay practices while subtly redefining the law, H.R. 3008 amounts to false advertising.

S. Anna Kondratas
Schultz Fellow