

Women's Equality in the Workplace

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I. Introduction

The glass ceiling debate has been beaten to the pulp in a media and caught worldwide attention from scholars and the general public. However, the decades old conversation has not significantly broken the glass ceiling to equalized workplace opportunities. Sure, some auspicious women have slipped through the cracks in the glass ceiling, but slithering through the glass ceiling is not the norm.

Even after decades of work to break the proverbial glass ceiling, the glass ceiling still remains as strong as it did before pioneers began chipping away at gender inequality in the workplace. Although the issue may be more prevalent in the media and advocates work harder than ever to raise awareness for gender discrimination, the war on gender discrimination is still an up-hill battle. Why, after decades of perseverance, awareness, lawsuits, and legislation, has the glass ceiling been fortified against breaking?

There are several reasons that explain why women are still struggling with gender discrimination in the work place. Women hold nearly half of all the positions of employment in the United States workforce, but account for a severe minority of the upper-management positions (Equal=Pay, Women's Bureau, p. 1). This proportion seems uncanny, as nearly half of the workforce aptitude is not being utilized for management-type positions.

II. What is the glass ceiling?

According to the U.S. Department of Labor, the term “glass ceiling” was coined in the late 1980's by the *Wall Street Journal*. The *Wall Street Journal* published an article that outlined “invisible barriers” that women experience “as they approach the top of the corporate hierarchy” (Good For Business, p. 3).

Generally, the term “glass ceiling” is referring to situations when women and minority groups alike, despite being qualified for upper management positions, are often passed-over and find it hard to advance beyond a certain level within a company or organization. The glass ceiling then creates “social disadvantage” as women and minorities are being denied advances in the workplace due to “irrelevant criteria such as race or gender” (Glass Ceiling, sec. Introduction). Furthermore, the glass ceiling is an effort to differentiate senior-level positions within upper management. The various inhibitions and obstructions are the structure of the glass ceiling that creates discrimination (Jackson & O’Callaghan, 2009, p. 460).

To paint a brighter picture, take a glance at the current employment standings; nearly 60% of women worked outside the home for monetary gains in 2005. Before World War II, a traditional family model was built where the father worked and the mother stayed home with the children and tended to the duties of the home. As the war forced women to work, women entered the work force and subsequently never left. Since WWII, there has been competition for employment between men and women. This is a relatively new feat as this structure has not been practiced as long as the traditional family system. Even though women are being promoted, they are not climbing to the top of the ladder with as much speed as their counterparts, men. In turn, managers are individuals who are in most direct contact with the glass-ceiling effect (Elacqua, p. 285-286).

Additionally, the term “glass cliff” is also used when a women is placed in a position doomed for failure before she begins. In 1991, the U.S. Department of Labor defined the term glass ceiling as, “those artificial barriers based on attitudinal or

organizational bias that prevented qualified individuals from advancing upward in their organization into management level positions.” The “old boys,” mentors, and bias are considered a problem in the glass ceiling war. “Women managers who are promoted tend to have received higher performance ratings prior to their promotions than their male counterparts have, suggest that women must perform better than men to receive a promotion” (Elacqua, p. 285-296).

Also, in 1995, a federal study showed that males, leaving 5% for females, held 95% of management positions. At that time, women held 45.78% of jobs in the US. “The US Equal Employment Opportunity Commission reported in 2004 that although 48% of U.S. jobs were held by a woman only 8% of senior managers were women.” If women are promoted to upper management, they are promoted in smaller, less functioning companies. In terms of a global scale, Germany also struggles with the glass ceiling with the German Civil Code. In Germany, women only held 10.3% of board of director seats compared to US women holding 17.5% of board of director seats (Pai and Vaidya, p. 106-108).

III. Women’s Equality Legislation

a. The 19th Amendment of 1920

According to the National Archives, in the 1900s, women were fighting for the right to vote within the suffrage movement. The movement first sparked in the 1800s when groups of women first organized to proclaim their right to vote. The 19th Amendment to the U.S. Constitution gave women the right to vote when the amendment was passed by the House of Representative on May 21, 1919, passed by Congress on June 4, 1919, and finally affirmed on August 18, 1920. It took decades, many steadfast

supporters, and much perseverance to make the women's suffrage movement a success with the passing of the 19th Amendment to the U.S. Constitution. The 19th Amendment reads, "The right of citizens of the United States to vote shall not be denied by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation" (National Archives, 1919).

b. The Equal Pay Act of 1963

According to White House document available online, in 1963, when wage discrimination was such disparate so that females earned 59 cents to every dollar of similar male employees, President Kennedy signed into effect the Equal Pay Act. The Equal Pay Act made it "illegal for employers to pay lower wages to women doing the same work as their male counterparts." Unfortunately, women still receive nearly 77 cents for every dollar of their similar male counterparts. It is said that this gap exists because of "nondiscriminatory factors" (National Equal Pay Enforcement Task Force, p. 1).

The Department of Labor states that close to half of all participants in the United States workforce are women and that women are now, more than ever, fulfilling jobs that have historically been filled by men. In fact, many of these women are the "breadwinners" in their families. Thus, wage equality is a family issue because not only do the women themselves suffer from lower wages, their families also suffer (Equal Pay, Women's Bureau, p. 1).

Under the Equal Pay Act, according to the U.S. Department of Labor, women are entitled to equal wages in comparison to their male counterparts when "equal skill, effort, and responsibility, and perform under the same working conditions" is shared. The term

“equal wages” encompasses a variety of types of monetary compensation including, “equal salary, overtime pay, bonuses, stock options, profit sharing, and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowance, hotel accommodations, reimbursement for travel expenses and benefits.” Furthermore, a discrepancy in wages must be proven to be based on either “fair seniority, merit or incentive system or a factor other than sex” (Equal=Pay, Women’s Bureau, p. 1-2). According to the U.S. Equal Employment Opportunity Commission, the Equal Pay Act of 1963 mandates that males and females working in the same realm of employment “must be given equal pay for equal work.” The employment positions do not necessarily need to be “identical,” rather the work is “substantially equal.” In other words, the specific job substance and content, not specific job name, is the responsible factor in deciding the equivalence of work completed (Equal Pay/Compensation Discrimination).

c. The Civil Rights Act of 1964

According to the EEOC, Title VII of the Civil Rights Act of 1964, makes it an illegal employment practice to discriminate against an individual solely on the basis of race, color, religion, national origin, and sex (Title VII, EECO).

d. The Pregnancy Discrimination Act of 1978

According to the U. S. Equal Employment Commission (1978), the Pregnancy Discrimination Act of 1978 was amended to Title VII of the Civil Rights Act of 1964, which prohibited sex-based discrimination on the sole foundation of pregnancy. The Civil Rights Act of 1964 was amended to state: "The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related

medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion” (U.S. Equal Employment Commission, 1978).

e. The Family and Medical Leave Act of 1993

According the U.S. Department of Labor, under the Family and Medical Leave Act (FMLA), each year, employees are protected for a charter of up to twelve weeks of unpaid leave. During the twelve-week leave, group health insurance benefits are to be continued. FMLA was enacted to enable employees to balance professional and personal responsibilities by permitting employees to take a designated, reasonable, and unpaid leave of absence for given personal or medical excuses. FMLA also seeks to equalize males and females in the workplace by providing equal opportunity for legitimate leaves of absence for each sex alike (Leave Benefits, U.S. Department of Labor).

The U.S. Department of Labor states that FMLA pertains to public and private employees for the following reasons: birth of a child, adoption or foster care of a child, care for an immediate family member, and medical leave for a serious health concern. The FMLA twelve-week leave of absence applies to employees who have worked for the employer 1,250 hours in the last twelve months and to employers who have over 50

employees (Leave Benefits, U.S. Department of Labor).

f. The Lilly Ledbetter Fair Pay Act of 2009

Nearly fifty years after President Kennedy enacted The Equal Pay Act, President Obama signed into law the Lilly Ledbetter Fair Pay Act in 2009. According to the White House, “The Lilly Ledbetter Act restored the interpretation of the law that a pay discrimination claim accrues when a discriminatory pay decision or practice is adopted, whenever an employee is subjected to a discriminatory pay decision or practice, and each time a discriminatory pay decision or practice affects an employee, including each time the employee receives a discriminatory paycheck” (National Equal Pay Enforcement Task Force, pg. 1).

In order to implement, the Lilly Ledbetter Fair Pay Act and more thoroughly investigate claims of sex-based discrimination, the National Equal Pay Enforcement Task Force was created to encompass the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), the Department of Labor (DOL), and the Office of Personal Management (OPM). The first goal is to “improve interagency coordination and enforcement efforts to maximize the effectiveness of existing authorities.” The second goal is to “collect data on the private workforce to better understand the scope of the pay gap and target enforcement efforts.” The third goal is to “undertake a public education campaign to educate employers on their obligations and employees on their rights.” The fourth goal is to “implement a strategy to improve the federal government’s role as a model employer.” The fifth goal is that “the administration will work with Congress to pass the Paycheck Fairness Act” (National Equal Pay Enforcement Task Force, pg. 1-8).

IV. Federal Glass Ceiling Commission

Even though the passing of the Civil Rights Act of 1964 increased the manifestation and standing of women in the workforce, consternations still remain concerning the virtual nonexistence of women in higher management positions, also referred to as the glass ceiling (Glass Ceiling, sec. Introduction).

President George Bush and Congress created the Federal Glass Ceiling Commission to investigate the glass ceiling. The commission was comprised of a group of twenty-one bipartisan individuals and was chaired by the Secretary of Labor, Robert B. Reich. The Federal Glass Ceiling Commission gave a mandate “to identify the glass ceiling barriers that have blocked the advancement of minorities and women as well as the successful practices and policies that have led to the advancement of minority men and all women into decision making positions in the private sector” (Good For Business, p. 3). In 1995, the Federal Glass Ceiling Commission commanded an inquiry into the glass ceiling and concluded by saying, “today’s American labor force is gender and race segregated- white men fill most top management positions in corporations” (Glass Ceiling, p. Introduction).

The Federal Glass Ceiling Commission found that there are three basic barrier levels that prevent progress upward the corporate hierarchy, creating the glass ceiling. The first barrier is the “societal” barrier that has been deemed to “may be outside the direct control of the business.” The second barrier is the “supply” barrier that pertains to “educational opportunity and attainment.” The third barrier is the “difference” barrier that has “manifested in conscious and unconscious stereotyping, prejudice, and bias related to

gender, race, and ethnicity” (Good For Business, p. 3-4).

In addition to the three major barriers that create the glass ceiling, there are also “internal structural barriers within the direct control of business” and “governmental” barriers. The barriers within the business structure include: lack of mentoring, training, opportunities, recruitment; unfavorable business setting that exclude; “pipeline” barriers; mixed standers of evaluation; and more. The barriers concerning government pertain to lack of monitoring, collecting relevant data, and reporting necessary information (Good For Business, p. 8).

In correcting the glass ceiling issue, the report states that there is not “one way” to fix the issue. Rather, each individual company must find the strategy that works for each given business setting. However, there are unified undertones that many successful businesses have in common who have challenged the glass ceiling. These successful ingenuities include: CEO support, incorporation into the business plan, designed specifically for each organization, the company is “inclusive,” the company addresses common misconceptions, requirements for accountability, and comprehensive progress (Good for Business, p. 9).

V. Government Research from 1980’s to 2000’s

The Federal Government, since the 1980s, has acknowledged that the glass ceiling does exist and that it is a problem in the workplace. In 1987, a report was published by the Department of Labor called Workforce 2000. The report entailed the configuration of the labor force in 1981.

“The U.S. Department of Labor reports that from 1979 to 2002, the proportion of women employed as managers, administrators, or executives nearly doubled and their

earnings grew by 27%.” The Federal Glass Ceiling described three different barriers that compose the glass ceiling: Societal Barriers, Internal Structure Barriers, and Government Barriers. Societal Barriers are the number of obtainable women and minorities for specific employment positions. Internal Structure Barriers are the resistance of corporations and entities to change their “outreach efforts,” “pipeline barriers,” and to “tolerate difference” (Jackson & O’Callaghan, 2009, p. 463).

Governmental Barriers are the absence of sufficient monitoring and enforcing by the government, lack of data collection, and recording on the glass ceiling. Statistics from the Equal Employment Opportunity Commission (EEOC) are that the number of women and minorities, specifically Black and Hispanic, in management has nearly quadrupled. Women and minorities are not properly qualified for various leadership positions formed under the deficiency theory. In turn, they possess deficiencies that prevent them from obtaining the senior-level positions. “Overt discrimination” can account for the treatment women and minorities receive. “Structural throes” can explain the friction between company policies and women and minority workers (Jackson & O’Callaghan, 2009, p. 463).

It has been nearly 20 years since the Federal Government has devoted means to break the glass ceiling within the workforce of the United States. In 1995, an initiative was formally created and referred to as the Federal Glass Ceiling Commission. Although there have been recent minor advancements for women and minorities, the large diversification gap still remains (Jackson & O’Callaghan, 2009, p. 461).

In 2002, the EECO gathered data to provide understanding of the private sector status of women. In the private sector since 1990, the number of women officials and

managers has increased from twenty-nine percent to thirty-six percent in 2002.

Furthermore, females hold forty-eight percent of the general employee workforce but only hold thirty-six percent of the positions for managers and officials in the workplace (Glass Ceiling, sec. Executive Summary).

On the other hand, females maintain eighty percent of all office and clerical positions. In terms of hiring, the health care industry it is more likely to hire women in positions of management and authority while manufacturing sectors are least likely to employ women in positions of management and authority. In general, the sectors of employment with a lower percentage of women in management and authority positions have a lower percentage of women in positions of general employment. On the other hand, sectors of employment with a higher percentage of women in management and authority positions have a higher percentage of women in their particular employing sector (Glass Ceiling, sec. Executive Summary).

Furthermore, the workplace advancement of less-qualified employees will provide negative consequences for the given employer and furthermore the economy at large. An effective abolition of the glass ceiling would require a strategic enforcement policy in addition to a collective understanding between employers and employees to dissolve barriers and obstacles that hinder women and minorities from climbing the upper management ladder (Glass Ceiling, p. Introduction).

VI. Media and Culture

Women's equality in the workforce is an issue that spans generations. The contemporary focus was in the form of the question asked by Katherine Fenton in the second 2012 Presidential debate concerning "inequalities in the workplace." Katherine

Fenton asked, “In what new ways do you intend to rectify the inequalities in the workplace, specifically regarding females making only 72 percent of what their male counterparts earn?” (Transcript and Audio, 2012).

President Obama was the first to answer her question by giving examples of his mother and grandmother. In referring to his grandmother, President Obama stated, “she started off as a secretary in a bank. She never got a college education, even though she was smart as a whip. And she worked her way up to become a vice president at a local bank.” He went on to add that she “hit the glass ceiling. She trained people who would end up becoming her bosses during the course of her career. She didn't complain; that's not what you did in that generation.” Because of his grandmother's experience, President Obama supported the reasoning for the Lilly Ledbetter bill (Transcript and Audio, 2012).

President Obama explained that the bill was “named after this amazing woman who had been doing the same job as a man for years, found out that she was getting paid less, and the Supreme Court said that she could not bring suit because she should have found out about it earlier, when she had no way of finding out about it.” The President went on to add that he “fixed” that problem as “an example of the kind of advocacy that we need because women are increasingly the breadwinners in the family. This is not just a women's issue. This is a family issue. This is a middle-class issue. And that's why we've got to fight for it.” President Obama went on to elaborate that in order to help women, a college education needs to be more affordable and the current laws need to be enforced. He concluded, “And we've also got to make sure that in every walk of life, we do not tolerate discrimination” (Transcript and Audio, 2012).

Governor Romney began his response by saying pay equality for women is an

“important topic.” Governor Romney explained that he was taken aback when he was elected governor; he had “the chance to pull together a Cabinet and all the applicants seemed to be men.” He then spoke with his staff and said, “How come all the people for these jobs are — are all men?” He then stated that his staff made a “concerted effort to go out and find women who had backgrounds that could be qualified to become members of our cabinet” (Transcript and Audio, 2012).

He stated that his reasoning for his “concerted effort” was because he actively “recruited” women and because he “recognized that if you're going to have women in the workforce, that sometimes they need to be more flexible.” He gave an example where his chief of staff, a woman, had two children who were in school and needed a “flexible schedule” to help her children get home from school and make dinner (Transcript and Audio, 2012).

In turn, Governor Romney said, “We're going to have to have employers in the new economy, in the economy I'm going to bring to play, that are going to be so anxious to get good workers they're going to be anxious to hire women. In the — in the last four years, women have lost 580,000 jobs. That's the net of what's happened in the last four years. We're still down 580,000 jobs. I mentioned 3 1/2 million women more now in poverty than four years ago.” He went on to add that, “What we can do to help young women and women of all ages is to have a strong economy, so strong that employers are looking to find good employees and bringing them into their workforce and adapting to a — a flexible work schedule that gives women the opportunities that — that they would otherwise not be able to — to afford” (Transcript and Audio, 2012).

VII. Case Law

a. Equal Employment Opportunity Commission (EEOC) Lawsuits

On December 6, 2000, The United States Equal Employment Opportunity Commission (EEOC) settled a sex based discrimination lawsuit against the company Landis Plastics, Inc. (LPI) for \$782,000. The suit against LPI, an industrial manufacturer, was on behalf of thirty females employees of LPI who were deprived of employment opportunities and promotions at the Solvay, New York operating site (EEOC, 2000). The EEOC Chairwoman Ida L. Castro commented on the settlement by saying "This important settlement opens doors to women by shattering an illegal glass ceiling which for years prevented promotional opportunities to female workers due to their gender. Women in the workplace must be judged strictly on their ability to do the job, and not on ill-founded stereotypes that block their upward mobility" (EEOC, 2000).

The lawsuit and Consent Decree, filed concurrently under Title VII of the Civil Rights Act of 1964, alleged that LPI was discriminating against women in the workplace. Specifically, it was asserted that LPI was using gender to negatively impact women in the workplace by assigning jobs, giving promotions, and other various standings, circumstances, and rights of employment. The lawsuit was founded on the claim from Beverly Martin and Kathy Saumier who stated that women who went after entry level positions were deliberately given lower paying positions and that women were refused employment advancements bases solely on their sex (EEOC, 2000).

In 2009, Outback Steakhouse settled a lawsuit for \$19 million brought by the United States Equal Employment Opportunity Commission (EEOC), filed under Title IV of the Civil Rights Act of 1964. In the lawsuit, the EEOC alleged that Outback

Steakhouse discriminated based on sex, against females. The women of the lawsuit claimed that they hit the glass ceiling at Outback Steakhouse because they were denied promotions and given less favorable jobs than their suitable male counterparts. In addition to the monetary settlement, Outback Steakhouse completed several employment-recruiting changes to eliminate the discrimination (EEOC, 2000).

EEOC Chairman Stuart J. Ishimaru commented on the settlement by saying “There are still too many glass ceilings left to shatter in workplaces throughout corporate America. The EEOC will continue to bring class lawsuits like this one against employers who engage in gender discrimination on a systemic scale. Hopefully this major settlement will remind employers about the perils of perpetuating promotion practices that keep women from advancing at work” (EEOC, 2000).

b. Dukes v. Wal-Mart Stores, Inc.

Dukes v. Wal-Mart Stores, Inc. was a class action suit filed against Wal-Mart, alleging sex-based discrimination on behalf of female employees at Wal-Mart in California, Texas, Ohio, Illinois, and Florida. The female employees alleged that they were discriminated against on the sole basis of their sex, being female. The group claimed they were not given comparable promotions, training, and pay compared to the equal male counterparts. In addition to the unequal workplace opportunities, the two female employees claimed that they were sexually harassed. The class action lawsuit was filed under disparate impact and disparate treatment under Title IVV of Civil Rights Act of 1964 (Dukes v. Wal-Mart Stores, Inc., 2011).

In terms of court decisions, a district court decided in favor of the employees’ motion for class certification. Then, the United States Court of Appeals for the Ninth

Circuit affirmed the district court's decision. Finally, the lawsuit was taken to the Supreme Court, and the Supreme Court ruled in a 5-4 decision to reverse the judgment from the court of appeals (Dukes v. Wal-Mart Stores, Inc., 2011).

The employees were unsuccessful in providing substantial proof that Wal-Mart, as a company, solely operated under discrimination as a general operating policy, rather than a few misguided managers. Also, the employees' backpay claims were not granted, as they were not properly warranted under the ruling (Dukes v. Wal-Mart Stores, Inc., 2011).

c. Rudin Review

A glass ceiling case is *Carmichael V. Birmingham Saw Works* where the court decided that "when an employer uses such informal methods it has a duty to consider all those who might responsibly be interested, as well as those who have learned of the job opening and have expressed interest" (Rudin, 2002).

Joel Rudin found that "of twenty-six glass ceiling cases, only nine mentioned the award of back pay." The author does acknowledge that some cases could have been overlooked; regardless, a trend has been set by the presented evidence that glass ceiling plaintiffs have an up-hill battle with the courts. The disparate-impact claims were more favorable to the courts rather than disparate-treatment claims to receive monetary compensation.

A disparate-treatment case can be filed under Title VII of the Civil Rights Act of 1964 or the Age Discrimination in Employment Act (ADEA). In order to prevail, the "plaintiffs must show that their employers treated them less favorably because of the employee's membership in a protected class, such as race, gender or age." Additionally,

the plaintiff has the burden to prove that “through direct or circumstantial evidence that the discrimination was intentional.” On the flip side, a disparate-impact claim “does not require proof of an intention to discriminate.” Rather, the plaintiff must prove that “a facially neutral employment practice has a disproportionate adverse impact on a protected group states a prima facie case of unlawful disparate-impact discrimination” (Rozycki & Sullivan, 2010).

Furthermore, fabricating a solid prima facie case concerning disparate-impact with focus on glass ceiling issues has its challenges and straightforward points. The least challenging element for formulating the case will be to identify the disparate-impact process which is the “subjective and secretive proses by which promotions are determined.” “The employer won’t be able to claim that job vacancies are posted, nor will the employer be able to prove a written, consistently applied procedure for determining who gets promoted” (Rudin, 2002).

Unfortunately, there are two potential barriers that could inhibit the construction of a prima facie case at this stage in the construction. First, Ruden stays that “the employer may be too small for a convincing case of disparate impact to be made.” On the other hand, this will not be a barrier for large companies. The second obstacle is that “the differences in promotion rates must be sufficiently stark.” Ruden says this will however not be an issue as “for example, a recent census found that ninety Fortune 500 companies have no female corporate officer.” Ruden surmised that these given companies would be “ripe targets for a glass ceiling” lawsuit (Rudin, 2002).

The next step in the road would be for the defendant to prove “job-relatedness of their promotional procedures.” Ruden noticed that many glass ceiling cases, the

defendants did not complete this step. If the defendant does prove “job-relatedness,” the plaintiff can still overcome this obstacle with the “alternate employment practice argument.” For example, the plaintiff could claim “better alternatives exist to subjective promotional procedures.” In the end, employers fail to employ the best candidates and in turn, hurt their success (Rudin, 2002).

Furthermore, the defendant employer will counter argue that proposed cognitive ability tests or intelligence tests are not adequate in measurement for upper management promotions. However, this claim does not pertain to the issue at hand as no promotion selection method will prove flawless. With that being said, at this point, the plaintiff would need to present the argument that cognitive ability tests or intelligence tests are more “job-related and have less disparate impact than informal, subjective procedures, not that cognitive ability test are the perfect way to choose a candidate for a job” (Rudin, 2002).

If an employee plaintiff can be victorious with given argument above, the defendants will be forced to comply with the plaintiff’s suggestions for the cognitive ability tests to be used for upper management promotional decisions. Ruden suspects that this method for promotion will subsequently contribute to the demise of the glass ceiling. Additionally, it would be expected that since tests are being utilized to select the very best candidate for the job, the company could profit from its improved management team (Rudin, 2002).

Ruden concludes by defining the glass ceiling case “as a challenge to subjective promotion procedures in which candidates cannot apply for job vacancies.” Upon an extensive review of case law on LEXUS NEXUS by Ruden, he found that glass ceiling

lawsuits are exceedingly rare and additionally that prevailing cases are likely to be disparate-impact claims rather than the contrary, disparate-treatment claims. To have the most success for victory, Ruden states the plaintiff and legal council should “challenge the disparate impact of subjective promotion procedures, and demand that the alternative employment practice of promotion based on cognitive ability test be used instead.” Furthermore, Ruden believes this is the best strategy for glass ceiling lawsuits as the claim in question “is based entirely on the text of the Civil Rights Act. “ In turn, this is a great benefit for the plaintiff as the case will then “not be subject to the regular fluctuations in interpretations of disparate-treatment law that attorneys have witnessed over the past decade” (Rudin, 2002).

In terms of legal council, attorneys for glass ceiling clients have a special challenge “to overcome the intense resistance to radical change that pervades all organizations.” Moreover, Ruden continues that “should the proposed strategy prove successful, it should lead to a sea change in promotional producers that will shatter the glass ceiling and result in hefty back pay awards for deserving plaintiffs, unless and until the test of the law is changed by Congress” (Rudin, 2002).

Kevin Stainback, a professor in Sociology at Purdue University who studies social inequality, provided his professional opinion on the topic of the glass ceiling. When asked if the glass ceiling is a realistic barrier to women in the professional sphere, Stainback replied:

The glass ceiling metaphor was initially coined to refer to the “invisible” barriers preventing women from attaining positions in the upper echelons of corporations. Researchers, as well as the popular press, continue to be concerned

with women's under representation in corporate executive and board of director positions. Others have used the term to refer to women's access to some professional and manager jobs as well. I assume you are asking about the latter version of the glass ceiling. Yes, it is definitely a barrier to women's career achievement. Women continue to lag behind men on nearly every indicator of quality employment examined including earnings, promotions, autonomy, authority, and access to managerial jobs. Perhaps the only indicator where women do better than men is occupational fatality—men are more likely to die on the job. If discrepancies in job compensation and types of jobs attained are an indicator of a glass ceiling, then yes, it is important for reproducing gender inequality. The more important question, in my opinion, is what is this glass ceiling? I think it is important to ask who is doing what to whom? By reifying the “glass ceiling” we place blame on this “invisible barrier” rather than the organizational characteristics and individual actions that lead to gender inequality. I mention some of these things below.

Researchers have invoked structural, cultural, and agentic (choice) explanations. Structural explanations could include a lack of women in some fields of study. For example, women are underrepresented in Science, Technology, Engineering, and Mathematics, the STEM fields, which could cause a pipeline problem—there aren't enough women in the pipeline to eventually perform these jobs. These explanations could focus on differences in human capital (e.g., education, skills, experience, etc.) between men and women as a “cause”.

Other structural explanations emphasize discrimination. For example, we know that women are often sorted into jobs that have less room for promotion opportunities. Consider the phrase “climbing the career ladder”. Visually, women’s career ladders tend to be shorter and have fewer rungs. In effect, their career prospects are circumscribed compared to men’s. Hence, even if there is a pipeline problem, some differences are the result of the differential sorting of women and men into jobs with different career prospects and provide differential opportunities to attain skills and experience that may push one beyond the glass ceiling. Hence, discrimination in the sorting of men and women into jobs contributes to the glass ceiling phenomenon.

Tied to structural explanations that emphasize discrimination are cultural explanations. For example, stereotypes are the appropriate kinds of jobs women and men should perform very. Part of the differential sorting of men and women into different jobs is related to these cultural expectations (stereotypes) about the competence of men and women at different tasks, such as carework or management. These cultural assumptions tend to essentialize gender leading organizational decision makers to believe that men and women are fit for different types of work based on biology—an erroneous assumption .

The final types of explanations focus on women’s choices. The most prominent, and controversial, was Lisa Belkin’s New York Times article “the Opt-Out Revolution.” She argued that highly educated women who could break the glass ceiling choose not to in order to pursue home and family. She argues that more and more highly educated women are choosing family over career. Other

agency explanations stress women's and men's choices in selecting educational degrees and careers. The problem is that the empirical research shows that women are more likely to be pushed out rather than opt-out of pursuing a high level career. Moreover, women and men tend to be nudged into different degree and career paths as well. The important thing to note is that choices are rarely void of constraints. To the extent that women make choices not to pursue high level careers, such choices are largely influenced by structural and cultural factors. In effect choices are enabled and constrained by structural and cultural factors (K. Stainback, PhD, interview communication, November 28, 2012).

VIII. Gender Wage Gap

The gender wage gap and the glass ceiling are sisters in the fight for women's equality in the workplace. According to the U.S. Department of Labor and the U.S. Bureau of Labor Statistics, in the year 2011, a full-time woman's median weekly wages were \$684 while a full-time man's median weekly wages were \$832. In short, women earn 82 percent of what men earn. This is a considerable increase since 1979 when women only earned 62 percent of what men earned. It is unclear whether this margin in pay difference is due to employment discrimination practices, choices of employment by men and women, or a combination of the two factors.

A study conducted by Cornell University concerning rates of promotion in empirical study found that information concerning both promotions and wage discrepancies have not readily been studied in the context of gender inequality. The study concluded that females in the workplace have a decreased chance of receiving a promotion than their male counterparts but that there appears to be no gender inequity in

terms of wages connected to promotions. The study's results paralleled the findings from other studies by Olson and Becker in 1983 and McCue 1996 (Blau and DeVaro, p. 1,22).

Professor Stainback offered commentary on the issue of the connectivity of the gender wage gap and the glass ceiling by saying that the two issues are connected "yes and no." Stainbeck elaborates by saying:

Yes, in the sense that restricting women from higher paying jobs contributes to the gender earnings gap. No in the sense that research consistently finds that gender inequality in earnings exists above and below the glass ceiling. In other words, if men and women had the same access to jobs on the other side of the glass ceiling, the gender wage gap would not disappear (K. Stainback, PhD, interview communication, November 28, 2012).

IX. Conclusion

a. Current Glance at Society

Equality for women in the workplace will not fully develop until society in general comes to terms with the notion that men and women are equals. Simple traditions are embedded in our processes from birth that scream inequality for women.

From birth, children are branded by society according to their sex. For toys, girls are given baby dolls while boys are given trucks and cars. Already, society is gearing the sexes to their gender roles where men are the "bread winners" and women care for the children. In the teen and dating years, men are taught to always cater to the woman, especially in the dating world. Men are generally expected to pay for meals and outing expenses, open doors, protect their date, and such. Further on in adulthood, wives are to assume their husband's last name and are formally referred to by their husband's name.

These societal attributes and traditions are not to be regarded in a complete negative light; but likewise, both sexes should be treated with mutual respect, without emphasis on either sex.

In consideration of the national stage, a serious female Presidential candidate is still inconceivable. Various women from Hillary Clinton, Sarah Palin, and Michele Bachmann have attempted the Presidential feat but were not taken as serious contenders compared to their male counterparts. If skill or preparedness was a concern with the given women listed above, this is understandable. Only the very best candidate for the job should always achieve the position. However, the presidential stage should be professional career pathway that is open and attainable for men and women alike.

From the toys purchased for children to the Presidential candidates, society paints gender pictures of inequality. The current generation of men view their female counterparts as equals more fully than any generation before them. However, this change alone and in itself is not enough to break the professional glass ceiling.

It should be noted that any person's personal preferences and career ambitions, are not being criticized. Each and every individual whether male or female, should be accepted, as the domestic partner if that is his or her choice. Contributions to society and the family are relevant in many roles.

This begs the question of whether women can "have it all?" Perhaps, but it seems theoretically unlikely as women cannot be in two places at once- in the home with the children and in the workplace. A juggling act can be attempted between personal and professional livelihood but ultimately one ambition will have to take priority. Instead, society should not automatically assume that women are the only gender that needs to

struggle with the noting of balancing of professional and private interests. Rather, this should be a concern for both men and women; women should not be solely questioned when professional and personal ambitions are present. Men are capable of domestic and child rearing duties too, society should not automatically assume that the women will be the dominate domestic partner, who will need to sacrifice professional livelihood.

b. Current Glance at Law

At first glance, the laws that deal with equality for women seem to be weak and only challenging for the cusp of equality. However, if you compare the realistic standing of society, the laws are painted in a different light. The laws that are currently in place are, in all actuality, progressive. Sure, there are advocacy groups who are fighting for women's equality and making show progress towards true and direct change. However, their advancement towards equality is laggard and only brushes on the verge of the true issue.

The current laws have challenged the issues of inequality in the workplace, but have not yet been able to shatter the glass ceiling because society must first change. Society will first need to take heed and acknowledge that there is a true, deeply rooted inequalities embedded in the depths of society. Then and only then, can more functional laws be created or perhaps, in a perfect world, laws will not be needed, as society itself will shatter the glass ceiling.

c. The Solution

In order to overcome and shatter the glass ceiling, society, must come together to push for the same agenda in terms of gender equality in the workplace. In this given

initiative, the premise of equality will need to nearly rearrange society in terms of traditions and general awareness for each gender.

In the ideal professional environment, the sex of an individual will not be taken into consideration. This coalition is parallel to the issue of race. Just as sex discrimination has been outlawed for years, slavery has been outlawed for hundreds of years, but undertones of inequality and prejudice still exist in some regions. Changing the mindset of generations takes time, but this time should be used wisely and efficiently to create the most positive change achievable.

In practical terms, it would seem redundant to add yet another regulatory agency to the others that already exist at the government level. Instead, working to ensure that infamously negative qualities of the bureaucracy system did not inhibit the regulation practices already in place. Additionally, actions to refine the current regulatory agencies have already begun. However, the statements made regarding the nature of these refinements must be followed through. The laws currently in place are of no use unless the government actively enforces the consequences for inequality in the workplace.

If the glass ceiling is to be broken, legislation would need to help the negative stereotypes and perceptions dissipate more rapidly than the natural processes of generational diluting. The motivation behind the Women Workplace Incentive Program (WWIP) is to create a professional environment where the female employee is welcome to thrive professionally. Currently, negative stereotypes and misperceptions concerning women in general are blockading women from being professionally equal to their male counterparts.

WWIP creates a professional environment where women can be given a chance to prove their professional capacity. Then, once the professional sphere can witness that women and men can be equal in the workplace, the previous biases can be expunged and society can gravitate towards more equal viewpoints.

This type of legislation would need to be signed into law by the federal government, and implemented and managed by the individual states. Individual states are most capable of the needs of their constituents and residents, more fluidly than the federal government. Also, a simple blanket law enacted by the federal government would not suit the various needs and interoperations of the individual states.

Women Workplace Incentive Program, also known as WWIP, would encourage companies to employ women in higher or upper management positions by creating monetary tax-relief incentives. First, a general and acceptable baseline percentage would need to be researched and decided upon. This baseline percentage would be representative of the portion of the number of upper management employees and the number of female upper management employees. For example, if the baseline percentage is set at an even 50% where each company, to qualify for the monetary incentive, must employ at least 50% female upper management positions. Then, that company would be granted the given tax-relief monetary incentive. Likewise, the percent of female upper management employees would be placed on a graded scale that would endow increasing amounts of monetary tax-relief incentives to increasing percentage of female upper management employees.

This proposed legislation is not a morphed version of affirmative action, as companies are not strictly mandated to employ a given number of women. Instead, the

companies are given incentives to hire and maintain women in high management positions. This practice is designed and intended to promote equality in assurance that the best candidate for each employment opening would then be chosen for the position. The long-term objective for this incentive is to demolish the negative stereotypes about women in the workplace. Once they are given the equal opportunity to prove themselves in the workplace, they will be more readily accepted as equals to their male counterparts.

However, it must be kept in mind that there is not an absolute win-win situation for all individuals involved in the glass ceiling solution. In fact, each proposed solution embodies various pros and cons. For example, men might feel as though the incentive initiative creates reverse discrimination. The potential for reverse discrimination is probable but should, in a perfect scenario, not be an issue. However, it must be acknowledged that employment is not perfect and all measures should be taken to avoid reverse discrimination and other injustices. The incentive initiative for women in the workplace is designed to create equality in the workplace and not to displace the inequality onto other groups. Again, caution must be taken to ensure that inequality is not transferred from women to other vulnerable or discriminatory groups.

Furthermore, most other employment specific laws state that they should be applied to businesses that are comprised of more than 50 employees. However, the women's incentive initiative would not need to follow this standard as the initiative poses no undo financial burden or obligation as the initiative is a voluntary incentive. In turn, all businesses of any size would be able to receive tax credit under the incentive and the percentage ratio guideline would establish eligibility. Additionally, government should act as an example for the private sector. For obvious reasons, the tax incentive would not

be implemented; however, government should take pride in being at the forefront of equality for women in the workplace.

Women's Workplace Incentive Program (WIPP) would operate in a similar fashion to the Work Opportunity Tax Credit (WOTC) in that they both reward employers for hiring specialty groups of employees. According to the Department of Labor, the Work Opportunity Tax Credit (WOTC) was signed into law by Congress as an incentive of a Federal tax credit to "employers for hiring individuals from certain target groups who have consistently faced significant barriers to employment." Furthermore, the reasoning behind the incentive was to "incentivize workplace diversity" (Work Opportunity Tax Credit, 2012).

In terms of critics, at first glance, WIPP could be construed to be an undo violation of the Civil Rights Act for reasons that it parallels hiring decisions based on sex. However, this is inaccurate as sex will not be the sole reason for employment. Rather, as the current WOTC objective states that the incentive was created to equalize the professional hiring process for "certain target groups who have consistently faced significant barriers to employment" (Work Opportunity Tax Credit, 2012). This objection mirrors the needs of women in terms of the proverbial glass ceiling. WIPP would mirror the objectives of WOTC with a slightly different method as it rewards employers for having a percentage of female employees in upper level management position, rather than an incentive for each single employee.

For example, if an employer is making a hiring decision between candidates, a male and female, the employer must hire the candidate who has the best credentials for the position. However, the WIPP is designed to give the employer an incentive against

strictly hiring the male candidate based on negative stereotypical apprehensions with female candidate. Thus, with the incentive, women employees will be given the chance to prove their abilities and overcome negative stereotypes with professional performance and hence, break the glass ceiling.

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