



WOMEN AT WORK:
LOOKING BEHIND THE NUMBERS
40 YEARS AFTER THE CIVIL RIGHTS ACT OF 1964

July 2004

About the National Partnership for Women & Families

The National Partnership for Women & Families is a nonprofit, nonpartisan organization that uses public education and advocacy to promote fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family.

Founded in 1971 as the Women's Legal Defense Fund, the National Partnership has grown from a small group of volunteers into one of the nation's most powerful and effective advocates for women and families. Working with business, government, unions, nonprofit organizations, and the media, the National Partnership is a voice for fairness, a source for solutions, and a force for change.

Ensuring equal opportunity, protecting civil rights, preventing discrimination, and monitoring welfare reform—these are just some of the challenges that the National Partnership battles everyday in our workplace fairness program.

Demonstrating our longstanding commitment to fairness in the workplace, the National Partnership leads the effort to create workplaces that are free of discrimination and responsive to the needs of low-income women who are especially vulnerable to exploitation. We are committed to increasing opportunities for women through affirmative action programs that are instrumental in helping women make gains in the workplace. The National Partnership has the unique role of addressing work/family issues—such as the need for paid leave and flexible job schedules—and fundamental civil rights protections as they affect welfare recipients and low-income workers.

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EXECUTIVE SUMMARY

WOMEN AT WORK: LOOKING BEHIND THE NUMBERS 40 YEARS AFTER THE CIVIL RIGHTS ACT OF 1964

On February 8, 1964, two days before the Civil Rights Act moved from the House to the Senate, Representative Howard W. Smith, a conservative Democrat from Virginia and strong opponent of the measure, offered an amendment that would prohibit sex discrimination in employment and expand the Act's coverage to include 21 million women of all races and ethnicities.¹ The amendment changed the course of history, but the motives behind it have been the subject of considerable debate. Many have interpreted Smith's proposal as an effort to sink the entire bill. Indeed, in the floor debate that ensued, many lawmakers mocked the notion of addressing sex discrimination in employment. But others saw the amendment as the culmination of vigorous advocacy by a small group of women's advocates who seized an opportunity to remedy longstanding job discrimination problems facing women. Despite formidable odds, women's rights advocates led a successful fight to secure passage of the amendment in the House. Shortly thereafter, the Senate passed the Civil Rights Act of 1964 and on July 2, President Lyndon Johnson signed it into law. For the first time, federal law would provide comprehensive employment discrimination protection for all women and people of color.²

On July 2, 2004, our nation will mark the 40th anniversary of the Civil Rights Act of 1964. Its passage was the culmination of years of struggle, borne by those who fought for civil rights and for the promise of equality under the law for all people. The Act represented a comprehensive effort to prohibit discrimination in several key areas, including public accommodations, education, and employment. Title VII of the Act also included groundbreaking new protections against sex discrimination in employment, thus opening important job opportunities to women. This anniversary gives the nation a chance to celebrate this accomplishment, assess progress, and consider the work that remains before women and people of color achieve true equality.

The National Partnership for Women & Families prepared this report on the Civil Rights Act's 40th anniversary to determine how well the law has addressed employment discrimination and removed barriers to women's equality on the job. To accomplish this, the National Partnership requested previously unpublished data on discrimination charges filed with the Equal Employment Opportunity Commission (EEOC) – a key federal agency responsible for Title VII enforcement. The data covers discrimination charges filed from FY1992 (October 1991 to September 1992) through FY2003 (October 2002 to September 2003).

Examining charges over this period provides a comprehensive and recent picture of both discrimination charges and trends. Using data that starts in FY1992 also, for the most part, helps ensure that this analysis reflects changes in the law affecting the types of discrimination claims individuals can bring. This new data details the racial, ethnic, and gender breakdowns of charges filed under Title VII, as well as under other key employment discrimination laws. The findings, questions they raise, and recommendations for action follow.

Overview

While women have made gains in the last four decades, serious barriers to full equality in the workplace remain. Title VII has been one of the main tools for tackling these barriers, helping to root out and eliminate illegal practices – but it has not been enough. Stereotypes and biases about women and their abilities still affect how much women are paid, limit their career advancement, and impede their efforts to achieve economic independence and stability.

That is why, on the 40th anniversary of the Civil Rights Act, the National Partnership is taking a comprehensive look at the discrimination women continue to face and the effectiveness of anti-discrimination enforcement efforts to date. This review of complaints filed by women with the EEOC sheds light on the types of problems women are experiencing at work. This new data makes clear that, 40 years after groundbreaking sex discrimination protections were passed and despite significant gains along the way, women continue to face multiple forms of job discrimination.

Findings

First, the data confirms the persistence of sex discrimination in the workplace and underscores the importance of vigorous enforcement of the law. Second, it illustrates that the combination of gender, race, and ethnicity can play a role in how different women are being treated – or mistreated – at work. Third, it reveals that even a decrease in the number of claims can hide an important story. For example, while the overall number of age discrimination claims went down over the last ten years, age discrimination claims filed by *women* increased. Fourth, it reaffirms that Title VII enforcement, as well as enforcement of other employment discrimination laws, must be both rigorous and sophisticated enough to effectively address different types of discrimination facing different groups of women.

Absent this type of analysis, enforcement efforts may work for some women and not others.

- ③ **In the last decade, the total number of sex discrimination charges filed with the EEOC increased by 12%.** The consistently high volume of sex-based charges makes clear that gender continues to affect women's treatment in the workplace and the opportunities that are available to them. In analyzing the data, the National Partnership found that White women file many more sex discrimination claims than women of color. The charges filed by White women have fluctuated from year to year over the last decade, but decreased by 11.5% from FY1992 to FY2003. At the same time, claims filed by women of color rose dramatically:
- In FY1992, African American women filed 3,898 sex discrimination charges, but in FY2003, they filed 4,686 charges – a 20% increase.
 - In FY1992, Hispanic women filed 1,052 charges; in FY2003, that number rose to 1,763 charges in FY2003 – an increase of 68%.
 - In FY1992, Asian/Pacific Islander women filed 220 charges but by FY2003, their filings had increased by 83% to 402.
 - In FY1992, American Indian/Alaskan Native women filed 82 charges and, in FY2003, they filed 118 charges – an increase of 44%.

A significant portion of the increase in sex discrimination claims over the last decade can be traced to the growing number of women of color filing complaints.

- ③ **Sexual harassment claims have increased 29% over the last ten years.** Although women file many more charges than men, charges by men have increased – men filed 15% of sexual harassment charges in FY2003, up from nine percent a decade ago. Further, charges filed by women from every racial and ethnic background have increased:
- In FY1992, White women filed 3,548 sexual harassment charges and, in FY2003, they filed 3,721 charges – a five percent increase.
 - In FY1992, African American women filed 907 sexual harassment charges and, in FY2003, they filed 1,288 charges – a 42% increase.
 - In FY1992, Hispanic women filed 326 sexual harassment charges and, in FY2003, they filed 717 charges – a 120% increase.
 - In FY1992, Asian/Pacific Islander women filed 64 charges and, in FY2003, they filed 128 charges – a 100% increase.
 - In FY1992, American Indian/Alaskan Native women filed 21 charges and, in FY2003, they filed 45 charges – a 114% increase.
- ③ **Pregnancy discrimination claims have increased significantly over the past decade.** Women continue to face discrimination because they are, or might become, pregnant. Since FY1992, there has been a 39% increase in the number of pregnancy discrimination charges filed, even while the nation has seen a nine percent drop in its birth rate.
- ③ **Women file more retaliation claims than men.** Claims of retaliation for complaining about discrimination have more than doubled in the last ten years. They now make up 27.9% of charges filed with the EEOC, behind only race and sex discrimination claims. More retaliation claims are filed by women than men – in FY2003, women filed 60% more retaliation claims than men, raising questions about whether women are targeted more for retaliatory action by employers for complaining about discrimination. This gender difference is consistently reflected across each racial or ethnic category:
- White women filed more than double the number of retaliation charges filed by White men, 5,253 compared to 2,227;
 - African American women filed eight percent more charges than African American men, 4,488 compared to 4,142;
 - Hispanic women filed 37% more charges than Hispanic men, 1,230 compared to 899;
 - Asian/Pacific Islander women filed two percent more charges than Asian/Pacific Islander men, 319 compared to 312; and
 - American Indian/Alaskan Native women filed 28% more charges than American Indian/Alaskan Native men, 77 compared to 60.
- ③ **National origin discrimination complaints filed by women of color have increased.** Since FY1992, the total number of national origin discrimination charges filed by women increased by 29%. This increase is due primarily to growth in the number of charges filed by women of color:
- Charges filed by Hispanic women increased by 16%, from 1,542 in FY1992 to 1,791 in FY2003;
 - Charges filed by African American women increased substantially, by 92%, from 262 charges filed in FY1992 to 502 charges filed in FY2003;

- Charges filed by Asian/Pacific Islander women increased by 72%, from 247 in FY1992 to 424 in FY2003; and
- Although fewer charges were filed by American Indian/Alaskan Native women, overall their charges increased by 12%, from 17 to 19.

Charges filed by White women see-sawed during the same time period, decreasing overall by just under four percent.

- ③ **Race discrimination claims are declining among African American women but increasing among other groups.** Overall, the number of race discrimination charges filed by women has declined by three percent since FY1992, largely due to a decline in charges filed by African American women. African American women still file more race discrimination charges than any other women – in FY1992, they filed 11,780 claims; in FY2003, they filed 10,811 claims. Race discrimination claims filed by all other women have increased:
- Claims filed by Hispanic women nearly tripled – from 89 to 252;
 - Claims by Asian/Pacific Islander women almost doubled – from 241 to 427;
 - Claims filed by American Indian/Alaskan Native women increased by 29% – from 119 to 153; and
 - Claims filed by White women increased by 19% – from 1,182 to 1,406.
- ③ **Disability discrimination claims filed by many women of color have increased.** Disability claims filed by both men and women have decreased since the 1990s, undoubtedly reflecting increasingly restrictive interpretations of the law by the Supreme Court. Even with these legal developments, charges filed by women of color have grown. Between FY1995 and FY2003, charges filed by African American women increased by four percent, from 1,731 to 1,807; charges filed by Hispanic women increased by 23%, from 436 to 532; and charges filed by Asian/Pacific Islander women increased by 25%, from 92 to 115. Charges filed by American Indian/Alaskan Native women fell by slightly more than 14%, from a high of 56 charges in FY1995 to 48 charges in FY2003.
- ③ **Age discrimination claims filed by women have increased.** The number of age discrimination charges filed by women increased by 39% from FY1992 to FY 2003, while the charges filed by men decreased by 24%. Charges filed by all women have gone up, with many of the sharpest increases found in the charges filed by women of color:
- Charges filed by African American women increased by 54%, from 1,130 charges to 1,739;
 - Charges filed by Hispanic women increased by 76%, from 317 charges to 559;
 - Charges filed by Asian/Pacific Islander women grew by 112.5%, from 96 charges to 204;
 - Charged filed by American Indian/Alaskan Native women rose by 104.5%, from 22 charges to 45; and
 - Charges filed by White women increased by two percent, from 4,604 to 4682.

Conclusions

Taken together, this data tells an important story about the persistence of discrimination facing women in the workplace and the need for vigorous enforcement of the law. But the data,

standing alone, does not provide all the answers. Many women do not challenge discrimination because they fear the length of the process, the potential impact on their job, the personal and financial costs, and the uncertainty about how receptive the courts will be to their claims. Also, although the EEOC's data is valuable and revealing in many ways, it is not perfect and is subject to interpretation. Some claimants do not provide complete information and sometimes the EEOC's database does not contain all the relevant information.

Better information is critical to ensuring that our nation has the best understanding possible of what is happening to women in the workplace. In particular, it is essential to understand the intersectional issues that can come into play for women at work, and identify enforcement strategies to address them. Women do not always experience discrimination solely on the grounds of gender, but also age, disability, health status, race, ethnicity, class, national origin, and sexual orientation. Federal enforcement agencies, thus, must address these intersectional issues to ensure that all women are treated fairly in the workplace. In addition, some populations, such as immigrant communities, may be reluctant to reach out to a federal agency like the EEOC for help when discrimination occurs. Despite these limitations, the 40th anniversary of the Civil Rights Act of 1964 provides a timely opportunity to draw attention to what we do and do not know to inform future efforts to ensure that our nation's laws work effectively for everyone.

The Civil Rights Act of 1964 plays a vital role in the lives of women today. Title VII has given women access to new job opportunities and a way to challenge discrimination that has persisted for too long. But it has not eradicated discrimination, which continues to shut women out of valuable jobs, deny them economic security, and relegate too many to second class status in the workforce. As our nation strives for true equality, it is essential to identify and address the issues that still hold us back. Forty years after the Civil Rights Act became law, our nation urgently needs:

- ③ **vigorous enforcement of the law** by federal agencies responsible for enforcing employment discrimination laws, including targeted efforts to challenge unique discriminatory practices facing different groups of women;
- ③ **comprehensive research and analysis** by researchers and enforcement officials to better understand discrimination statistics;
- ③ **accurate data collection** to gain a clearer picture of what is really happening to women and men in the workplace; and
- ③ **public education** aimed at employees and employers about employment discrimination laws and how they work.

There is also a role for Congress, which should enact changes that will ensure that civil rights laws provide meaningful, effective, and comprehensive protections against job discrimination. Only then will women truly realize the promise of the Civil Rights Act and have equal opportunity and a fair chance to succeed in the workplace.

WOMEN AT WORK: LOOKING BEHIND THE NUMBERS 40 YEARS AFTER THE CIVIL RIGHTS ACT OF 1964

On July 2, 2004, our nation will mark the 40th anniversary of the Civil Rights Act of 1964 (“the Act” or “the Civil Rights Act”).³ Its passage was the culmination of years of struggle, borne by those who fought for civil rights and for the promise of equality under the law for all people. The Act represented a comprehensive effort to prohibit discrimination in several important areas, including public accommodations, education, and employment.⁴ Title VII of the Act also included groundbreaking new protections against sex discrimination in employment, thus opening important job opportunities to women. This anniversary gives the nation a chance to celebrate this accomplishment, and to assess progress and remember the work that remains before women and people of color will achieve true equality.

I. NO LAUGHING MATTER: THE HISTORY OF THE ACT & SEX DISCRIMINATION

Title VII of the Civil Rights Act provided important new protections against employment discrimination based on race, color, national origin, religion, and sex. However, few people realize that the authors of the Act may not have originally intended to include sex discrimination in its provisions. The inclusion of sex as a protected category in employment was introduced late in the House debates and was unexpected. On February 8, 1964, two days before the Civil Rights Act moved from the House to the Senate, Representative Howard W. Smith, a conservative Democrat from Virginia and strong opponent of the measure, offered an amendment that would prohibit sex discrimination in employment and expand the Act’s coverage to include 21 million women of all races and ethnicities.⁵ That amendment changed the course of history for women in the workplace, but the motives behind it have been the subject of much debate.⁶ Many have interpreted the amendment and its focus on sex discrimination as a strategy to sink the entire bill. Indeed, as Congressman Smith spoke, mocking the amendment and thus raising questions about his real intent, audience members ridiculed and laughed at the proposal. But close analysis also shows that the amendment was the culmination of vigorous advocacy by a small group of women’s advocates who seized an opportunity to remedy longstanding job discrimination problems facing women. What is indisputable is that, despite the odds, women’s rights advocates led a successful fight to secure passage of the amendment in the House. With eleven of the twelve women in the House in favor of the amendment, it ultimately passed by a vote of 290 to 130 on February 10, 1964. Shortly thereafter, in June of that year, the Act passed in the Senate. On July 2, 1964, President Lyndon Johnson signed the Civil Rights Act of 1964 into law. For the first time in American history, federal legislation would provide comprehensive employment discrimination protection for women and people of color.⁷

Following its passage in 1964, women’s rights advocates worked to ensure vigorous enforcement of the new law by the Equal Employment Opportunity Commission (EEOC), the statutorily created agency charged with enforcing Title VII. Women began pursuing Title VII claims with the EEOC and in courts, and their victories paved the way for the development of sex discrimination jurisprudence over the last four decades, forever changing hiring, promotion, and

benefits practices for women. Title VII also enabled women to challenge pregnancy discrimination and sexual harassment in the workplace, thus broadening the Act's conception of and protections against gender discrimination.⁸

II. THE REAL DEAL: BASIC FACTS ABOUT WOMEN IN THE WORKPLACE

While the initial move to include a prohibition against sex discrimination in Title VII may have had questionable motives, it has become a critical tool for addressing barriers to employment for women. When the Act was passed, it was not uncommon to have job advertisements segregated, with separate ads for female jobs and male jobs. Negative perceptions about the work ethic of women workers and out-dated notions about "proper" roles for women limited their job opportunities, often relegating them to the lowest-paid jobs. But over time, these attitudes and stereotypes have begun to erode. Title VII has played a central role in helping women make significant progress in tearing down entrenched barriers to employment. As a result, more women are participating in the workforce than ever before. A brief snapshot of women in the workplace⁹ gives us a clearer picture of the gains women have made, and the challenges that remain:

- ③ ***More Women in the Workforce.*** In 2003, women comprised 47% of the total labor force, with a labor force participation rate of 59.5% (meaning that 59.5% of women, 16 years and older, were working or looking for work).¹⁰ White women comprised 38% of the total labor force, while women of color made up 14%.¹¹ Women of color are becoming a larger segment of the American workforce¹² and tend to have slightly higher labor force participation rates than White women.¹³ *See generally* Charts A-1 and A-2.
- ③ ***Where Women Work.*** While women have more job options than they did in 1964, they continue to be concentrated in certain industries and traditionally female jobs. The top five occupations for women in 2003 were secretaries and administrative assistants (96.3% female), elementary and middle school teachers (80.6%), registered nurses (90.2%), nursing, psychiatric, and home health aides (89%), and cashiers (75.5%).¹⁴ But the data also reveals racial and ethnic differences, with women of color often working in industries or jobs unique to their communities or regions of the country. The industry with the highest percentage of African American women in 2003 was nursing/residential care facilities, for Hispanic women it was crop production, for Asian/Pacific Islander women it was computer and electronic manufacturing, and for American Indian/Alaskan Native women it was gasoline stations.¹⁵
- ③ ***Climbing the Ladder and Hitting the Glass Ceiling.*** While gradual changes have occurred, the glass ceiling persists for women and especially for women of color. Women in top executive positions increased from 8.7% in 1995 to 12.5% in 2000;¹⁶ but the percentage for women of color has remained unchanged at 1.3% since 1999.¹⁷ Looking at a broader category of both high and low level managerial jobs, the number of women officials and managers in the private sector increased from just over 29% in 1990 to 36.4% in 2002.¹⁸ *See* Chart B. Asian/Pacific Islander women were most likely to work in such jobs, with 41.4% holding such positions. Hispanic women, at 22.9%, were least likely to hold such

jobs, followed by 29.7% of African American women, 30% of American Indian/Alaskan Native women, and 38.7% of White women.¹⁹

- ③ ***Women Working Hard for Too Little Money.*** Women continue to get paid less than men – in 2003, White men were paid \$715 per week, Asian/Pacific Islander women were paid \$598, White women were paid \$567, African American women were paid \$491, and Hispanic women were paid \$410.²⁰ See Chart C.
- ③ ***Women Stuck in Low Wage Jobs.*** Women hold the majority of low-wage jobs²¹ and are more likely to be lower paid than their male counterparts. Women of color disproportionately work in low-wage jobs. In the year 2000, 27.7 % of White women, 36.5% of African American women, and 49.3% of Hispanic women were low-wage earners, as compared to 15.2% of White men.²² See Chart D.
- ③ ***More Mothers Working.*** Nearly three-quarters of mothers are in the labor force, including most of the women with very young children.²³

These quick facts illustrate how the American workplace landscape has changed for women over the last 40 years. Women have integrated themselves into the workforce and moved into many different jobs. But despite significant gains, many women still work in jobs that are predominantly female and that pay lower wages. It is noteworthy that there are important differences by race and ethnicity in terms of where women work – women from different racial and ethnic backgrounds often occupy positions that are unique to their community or region. These differences demonstrate that job opportunities can vary for different groups of women.

III. PAST, PRESENT, AND FUTURE – A FRESH LOOK AT THE DISCRIMINATION STILL FACING WOMEN IN THE WORKPLACE

While women have made gains in the last four decades, there remain serious barriers to full equality in the workplace. Title VII has been one of the main tools for tackling these barriers, helping to root out and eliminate illegal practices. But despite these legal protections, women continue to face discrimination. Stereotypes and biases about women and their abilities affect how much women make, limit their career advancement, and impede their efforts to achieve economic independence and stability. Thus, to make a meaningful assessment of where women are, it is essential to take a comprehensive look at the discrimination women continue to face and the effectiveness of anti-discrimination enforcement.

One important way to evaluate women's progress in combating sex discrimination in the workplace is to look at complaints filed with the Equal Employment Opportunity Commission (EEOC), which investigates employment discrimination complaints filed under several different employment discrimination laws, including Title VII. A review of complaints filed by women can shed light on the type of problems women are experiencing at work. In doing this, it is important to remember that, for many employees, filing a charge of employment discrimination can be difficult and pose significant personal and financial costs. An individual who believes that he or she has been discriminated against must file a charge of discrimination with the EEOC within 180 days of the date of the alleged violation, or risk forfeiting the claim entirely.²⁴ The

EEOC receives thousands of cases each year and often has a case backlog, so it can take a long time for the agency to investigate a claim. The vast majority of charges are either settled with a finding for the complainant, closed for administrative reasons, or deemed unreasonable. Very few charges – typically less than five percent – result in litigation by the EEOC. If the EEOC does not resolve the case in a timely fashion, usually within six months, an individual can request a “right to sue” letter that allows him or her to pursue the claim in court. The process is an important way of ensuring that employment discrimination complaints are thoroughly investigated, but it can be time-consuming and emotionally draining. The burdens associated with filing and pursuing complaints can be a deterrent to doing so.

🕒 **A. Sex Discrimination**

Several types of claims can be brought under Title VII, but the most complaints filed by women allege sex discrimination. These complaints encompass the full range of sex discrimination issues – such as discrimination in hiring, pregnancy discrimination, glass ceiling problems, and sexual harassment – but exclude complaints filed under other Title VII bases (e.g., race, color, or national origin).²⁵ Sex discrimination complaints constitute a significant portion of the EEOC’s overall caseload. Over the last ten years, for example, individual sex discrimination charges have comprised approximately 30% of the charges filed with the EEOC, second only to race discrimination complaints.²⁶ The consistent volume of sex-based charges demonstrates that gender continues to play in role in how women are treated in the workplace and the opportunities that are available to them. Title VII remains the primary vehicle used to challenge sex discrimination problems.

The total number of sex discrimination charges has increased, from 21,796 in FY1992 to 24,362 in FY2003 – a 12% increase. These numbers have gone up and down over the time period, with the largest number of charges, 26,181, being filed in FY1995. There are striking differences in charge filings by race and ethnicity. An examination of previously unpublished data²⁷ over this period reveals that the number of sex discrimination charges filed by women of color has increased, while the number of charges filed by White women has declined. The number of sex discrimination claims filed by White women has gone up and down – from 11,416 filed in FY1992, to a high of 14,126 in FY1995, to 10,100 filed in FY2003. In contrast, the number of claims filed by women of color has gone up steadily and across the board:

- ③ In FY1992, African American filed 3,898 sex discrimination charges and, by FY2003, they filed 4,686 charges – a 20% increase.
- ③ In FY1992, Hispanic women filed 1,052 charges. In FY2003, that number rose to 1,763 charges – an increase of 68%.
- ③ In FY1992, Asian/Pacific Islander women filed 220 charges and, in FY2003, their filings had increased by 83% to 402.
- ③ In FY1992, American Indian/Alaskan Native women filed 82 charges and, in FY2003, they filed 118 – an increase of 44%.

These numbers provide an important snapshot of sex discrimination claims, but it is important to put them – and the numbers discussed throughout this report – into context. By examining the number of charges broken down by race, ethnicity, and gender, the goal is not to determine which group experiences the “most discrimination.” Such an analysis would be both futile and

counter-productive because it pits different groups of women against each other. Moreover, because the EEOC does not always have complete information on claimants, the numbers discussed in this report are not perfect and do not include every claim filed with Commission. Further, because the actual charge numbers for women of color in the workforce are smaller than the numbers for White women, any changes in charges filed by women of color tend to produce larger percentage changes.

But even with these limitations, the numbers discussed herein can be an important indicator of the need for more scrutiny in a particular area. They also can be combined with other data to develop a more comprehensive picture of what is happening in the workplace.

With this context in mind, the data shows that women of color are filing an increasing percentage of sex discrimination complaints. Although women of color file fewer overall complaints than do White women, much of the overall increase in sex discrimination complaints is due to the increase in complaints filed by women of color. In FY1992 for example, White women filed nearly 65% of sex discrimination claims and women who identified themselves as either African American, Hispanic, Asian/Pacific Islander, or American Indian/Alaskan Native filed 30% of claims.²⁸ By FY2003, slightly more than half – 52.5% – of claims were filed by White women, and 36% were filed by women who identified themselves as either African American, Hispanic, Asian/Pacific Islander, or American Indian/Alaskan Native.²⁹ The reasons for these shifts over time are not entirely clear. While the factors already discussed above may be having some impact on the overall numbers, the changing percentages also may reflect, in significant part, that the combination of racial, ethnic, and gender bias creates serious barriers for women of color. Thus, this data suggests the need for enforcement efforts specifically aimed at eliminating discrimination faced by women of color.³⁰

Analysis and Next Steps. Taken together, what does this tell us? First, it confirms the persistence of sex discrimination in the workplace and underscores the importance of vigorous enforcement of the law. Second, it illustrates that the combination of gender, race, and ethnicity can play a role in how different women are treated – or mistreated – at work. And it reaffirms that Title VII enforcement must be sophisticated enough to effectively address the different types of discrimination facing different groups of women. This means that each agency with responsibility for enforcing employment discrimination laws or regulations should commit to gathering and analyzing data on discrimination claims broken down by multiple factors, e.g., race, ethnicity, gender, age, disability, occupation, and industry. Such an analysis can help to identify specific industries or occupations where discrimination problems have arisen. Further, the data should be used by each agency in the development of their annual enforcement agenda to ensure that their plans include specific strategies to address particular problems that may be facing women from different racial and ethnic backgrounds. Absent this type of analysis, enforcement efforts may at best be partial solutions that work for certain women and not others.

B. Sexual Harassment

One of the most important legal and workplace developments for women over the last 40 years has been the application of Title VII's protections against sex discrimination more broadly to cover sexual harassment. In 1976, a court in Washington, D.C. first recognized sexual

harassment as discrimination prohibited by Title VII.³¹ In a different case one year later, the first appellate court reached the same conclusion.³² Ten years later, in 1986, the Supreme Court agreed, recognizing sexual harassment as an unlawful employment practice that violates Title VII.³³ Since then, courts have handled thousands of cases, further developing Title VII's sexual harassment jurisprudence to ensure that women have meaningful protections against sexual harassment in the workplace.

Since FY1992, the number of sexual harassment charges has risen by 29%,³⁴ although charges have declined some in the last two years. In FY2003, 13,566 sexual harassment charges were filed with the EEOC or Fair Employment Practice Agencies (FEPAs).³⁵ The majority of these charges were filed by women, although the percentage of sexual harassment charges filed by men has grown steadily – from nine percent of the EEOC's sexual harassment charges in FY1992 to 15% in FY2003.³⁶

Unpublished data³⁷ between FY1992 and FY2003 reveals that sexual harassment charges by all women have increased, with the largest increases found in the charges filed by women of color:

- ③ In FY1992, White women filed 3,548 sexual harassment charges and, in FY2003, they filed 3,721 charges – a five percent increase.
- ③ In FY1992, African American women filed 907 sexual harassment charges and, in FY2003, they filed 1,288 charges – a 42% increase.
- ③ In FY1992, Hispanic women filed 326 sexual harassment charges and, in FY2003, they filed 717 charges – a 120% increase.
- ③ In FY1992, Asian/Pacific Islander women filed 64 charges and, in FY2003, they filed 128 charges – a 100% increase.
- ③ In FY1992, American Indian/Alaskan Native women filed 21 charges and, in FY2003, they filed 45 charges – a 114% increase.

These numbers demonstrate that sexual harassment remains a significant problem for all women workers. But, as with sex discrimination more broadly, racial and ethnic differences may make it more likely that some women will experience sexual harassment and file claims. The increases in claims filed by women of color may signal unique problems they face in the workforce, or a growing awareness of the remedies available to them when sexual harassment does occur. Closer scrutiny can help determine whether sexual harassment claims are more prevalent in certain industries or occupations, and whether biases toward women of color pose special problems that require specialized enforcement strategies. Additional research also can help answer whether women of color are experiencing sexual harassment at rates disproportionate to their representation in the workforce, even though the actual charge numbers for women of color are smaller than the actual numbers for White women.

It is important, however, to recognize that these statistics tell only part of the story because many women who are sexually harassed never file a claim with the EEOC. Even with the protection of Title VII, sexual harassment remains a significant barrier for many women at work. Some studies report that 40 to 70% of women and 10 to 20% of men have experienced sexual harassment in the workplace.³⁸ Studies and surveys conducted in specific industries also confirm that sexual harassment continues to be a problem confronting many women.³⁹ Many sexual harassment cases go unreported for a variety of reasons. In some cases, women may not know

that harassment violates the law and thus do not report it unless or until a high profile case, such as Anita Hill, is in the news.⁴⁰ Even those who know that harassment is illegal may be reluctant to report it. One researcher found that less than ten percent of the women who had experienced sexual harassment in an organization said that they reported it or talked to a supervisor.⁴¹ Many of these women may fear losing their job or facing other types of retaliation. Others may simply conclude that they cannot afford to pursue a case, either because of the time involved or the personal, financial and emotional resources required. But it is clear that most sexual harassment cases are never addressed through legal mechanisms.

Analysis and Next Steps. Stopping sexual harassment will require a multi-faceted approach. Title VII has been a critical tool and, without its protections, there would have been no federal remedies available for victims of these illegal practices. Thus it is crucial to have strong, vigorous Title VII enforcement including comprehensive efforts to investigate and resolve sexual harassment and other employment discrimination claims, and education for employers and employees. Federal agencies have many more resources than individual complainants to educate employers and crack down on those who violate the law. Further, as already noted, these agencies must collect and analyze the relevant charge data, and affirmatively take responsibility for answering questions such as whether women from different racial and ethnic backgrounds are experiencing discrimination at disproportionate rates. This information then must be used by enforcement agencies to develop and pursue specific legal strategies to challenge discriminatory practices, including practices that uniquely may be facing women of color. Employers also have an obligation to educate their own employees, particularly supervisors, about their legal obligations and about what to do if an employee faces discrimination. The fact that many women are reluctant to pursue claims suggests that more must be done not only to prevent harassment but also to create an environment where workers can challenge harassment without fear of retribution.

🕒 *C. Race and National Origin Discrimination*

Title VII's prohibition against employment discrimination based on race and national origin also has been an important source of protection for women.⁴² Many women, and men, have faced discrimination on the job and in hiring because of perceptions about their abilities and work habits that are linked to their race or ethnicity. Race discrimination involves discriminatory employment practices based on the racial group affiliation of a particular individual. National origin discrimination is also against the law; it involves discriminatory practices driven by, for example, an individual's birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. These are two distinct types of discrimination, and individuals may experience both. The law's prohibition against race and national origin discrimination also covers racial or ethnic harassment, such as the use of racial or ethnic slurs or jokes aimed at an employee. Unpublished data on EEOC cases broken down by race, ethnicity, and gender from FY1992 to FY2003⁴³ reveals some unexpected trends.

③ *Race Discrimination.* The largest number of charges filed with the EEOC allege race discrimination in violation of Title VII. For example, in FY2003, race discrimination charges comprised approximately 35.1% of the charges filed with the EEOC – more cases than for any other type of charge.⁴⁴ The total number of race discrimination charges filed by women with the EEOC declined three percent, from 13,289 charges in FY1992 to 12,892

charges in FY2003, largely due to a decline in charges filed by African American women. But there was a drastic increase in race discrimination charges filed by Hispanic and Asian/Pacific Islander women, with the filings by each group increasing by more than 100% from a decade ago. The number of charges filed by White women and American Indian/Alaskan Native women also increased. Overall, the total number of charges filed by men has decreased since FY1992, but the numbers went up and down during the period. In FY1992, men filed 16,027 race discrimination charges, but in FY2003, men filed only 15,235 charges – a decrease of five percent.

WOMEN	MEN
<ul style="list-style-type: none"> • White: Charges filed by White women have increased by 19%; 1,182 charges were filed in FY1992, and 1,406 charges were filed in FY2003. • African American: Charges filed by African American women have gone down by eight percent, from 11,780 in FY1992 to 10,811 in FY2003. Overall, African American women file more race discrimination charges than women of any other race. • Hispanic: Charges filed by Hispanic women have gone up dramatically. In FY1992, 89 charges were filed; in FY2003 Hispanic women filed 252 charges – an increase of 183%. • Asian/Pacific Islander: Asian/Pacific Islander women filed 241 charges in FY1992 and 427 charges in FY2003 – an increase of 77%. • American Indian/Alaskan Native: Charges filed by American Indian/Alaskan Native women have fluctuated – in FY2003, 153 charges were filed – a 29% increase from the 119 charges filed in FY1992. 	<ul style="list-style-type: none"> • White: Charges filed by White men have gone up slightly. In FY1992, 1,436 were filed and, in FY2003, 1,602 charges were filed – a 12% increase. • African American: Charges filed by African American men have gone up and down. Overall, charges decreased by 9.5% from 13,979 in FY1992 to 12,654 in FY2003. • Hispanic: Charges filed by Hispanic men have gone up substantially – from 142 in FY1992 to 399 in FY2003 – an increase of 181%. • Asian/Pacific Islander: Charges filed by Asian/Pacific Islander men also have risen – from 415 in FY1992 to 514 charges in FY2003 – a 24% increase. • American Indian/Alaskan Native: Charges filed by American Indian/Alaskan Native men dropped slightly by six percent, from 161 charges in FY1992 to 151 in FY2003.

Analysis and Next Steps. Even with slight decreases over the last ten years, African American women and men continue to file more race discrimination than any other type of claims. But it is clear that racial discrimination is no longer simply a “Black/White issue” – indeed, the largest growth in race discrimination claims can be found in filings by Hispanic and Asian/Pacific Islander women (and men). One reason for this change undoubtedly is the growing ethnic diversity of the workplace. But there may be other reasons – such as biases related to ethnic stereotypes – that also are changing workplace dynamics. Thus, the relevant federal agencies should conduct further analysis to determine possible trends and changes occurring in the workplace.

- ③ **National Origin Discrimination.** In FY2003, 8,450 national origin complaints were filed, constituting 10.4% of charges filed with the EEOC.⁴⁵ The total number of charges filed by women based on national origin increased by 29% (2,587 in FY1992 and 3,335 in FY2003). Charges filed by White and American Indian/Alaskan Native women went up and down during this period, but the numbers for African Americans and Asian/Pacific Islanders increased by more than 70%. As with race discrimination, men filed more national origin discrimination charges than women – in FY2003, men filed 4,988 charges while women filed 3,335. In general, the numbers for men varied from year to year, with a noticeable increase in charges filed by African American men and a decrease in charges filed by White and Hispanic men.

WOMEN

- **White:** Charges filed by White women went up and down from FY1992 to FY2003 and, overall, decreased by just under four percent.
- **African American:** Charges filed by African American women increased substantially, by 92%, with 262 charges filed in FY1992 and 502 filed in FY2003.
- **Hispanic:** There were wide variations in charges filed by Hispanic women from year to year but, overall, from FY1992 to FY2003 there was a 16% increase in charges, from 1,542 to 1,791.
- **Asian/Pacific Islander:** Charges filed by Asian/Pacific Islander women have increased by 72%. In FY1992, 247 charges were filed; by FY2003, that number had increased to 424.
- **American Indian/Alaskan Native:** Few charges were filed by American Indian/Alaskan Native women in this category, and they went up and down from year to year. Overall, from FY1992 to FY2003, there was an increase of 12% in charges filed by American Indian/Alaskan Native women, from 17 to 19.

MEN

- **White:** Charges filed by White men decreased by 19%, with 2,014 charges filed in FY1992 and 1,629 charges filed in FY2003.
- **African American:** Charges filed by African American men increased by 26%. In FY1992, 577 charges were filed and in FY2003, 727 charges were filed.
- **Hispanic:** Charges filed by Hispanic men went up and down over the period, with an overall decline of nine percent from FY1992, when 2,734 charges were filed, to FY2003, when 2,487 charges were filed.
- **Asian/Pacific Islander:** Charges for Asian/Pacific Islander men varied widely, with a high of 704 charges in FY2002. In FY1992, Asian/Pacific Islander men filed 517 charges and, in FY2003, they filed 587 charges – an overall increase of 13.5%.
- **American Indian/Alaskan Native:** While the numbers remained small, there was a 75% increase in charges by American Indian/Alaskan Native men between FY1992, when 16 charges were filed, and FY2003, when 28 charges were filed.

Analysis and Next Steps. African American and Asian/Pacific Islander workers account for a significant portion of the rise in national origin discrimination claims since FY1992. This suggests that the growing diversity of the workforce has had unintended consequences for many women and, in particular for women of color, whose national origin complaint filings uniformly increased. This finding reinforces the need for effective education by employers about different types of discriminatory conduct and how the law works. It also suggests the need for thorough research and analysis to better understand who files such complaints, and identify specific occupations and/or industries where claims are being generated. Further, enforcement agencies must use this information to craft investigative strategies aimed at challenging discriminatory practices that may be affecting different groups of workers.

It is clear that both race and national origin discrimination can take many forms. The significant number of charges filed by men and women – and the sharp increases over the last decade, particularly for women of color – make clear that race and national origin discrimination have a serious impact on job opportunities for many women. Strong enforcement is essential to identifying the kinds of discrimination women and men from different racial and ethnic groups are experiencing. Only when enforcement is strong can our nation achieve *true* equal opportunity for all workers.

🕒 **D. Discriminatory Hiring, Promotion, and Pay Practices**

While the options for women, who of course can be of any race, and people of color in the labor market have increased dramatically since the 1960s, both groups still too often are tracked into lower paying jobs with fewer benefits that make it more difficult for them to achieve economic independence. This occupational segregation severely limits advancement opportunities for these workers. Recent studies showing that, despite modest progress, women and people of

color comprise a relatively small percentage of upper-level management only confirm that there are still significant obstacles to accessing senior level, higher paying, longer term jobs. Thus, it is essential that strong enforcement efforts root out practices that perpetuate these barriers. A review of the data, however, suggests that more work is needed to tackle these types of discrimination problems. A relatively small percentage of the EEOC's litigation caseload has been devoted to promotion or hiring cases that might help to shatter the glass ceiling or other barriers to women's advancement. In FY2002, only 3.1% of the sex discrimination cases filed by the EEOC alleged discrimination in promotions, and 5.6% of the sex discrimination cases alleged discrimination in hiring.⁴⁶

The wage disparities experienced by women, compared to men, appear at all economic levels, not just in top-level, highest paying jobs. Researchers note that differences in human capital – educational background, job qualifications, and occupational placement – account for only a portion of the gender pay disparity, and surmise that part of the gap is due to discrimination.⁴⁷ This holds particular significance for women of color who are the lowest paid workers and experience the widest pay gaps. Title VII's prohibition against employment discrimination covers discriminatory pay practices, and has been an important source of protection. Other key laws and directives – such as the Equal Pay Act (“EPA”) and Executive Order 11246⁴⁸ – also have played a central role in helping women get paid more fairly.

The EEOC's data suggests that only a small percentage of Title VII claims involve wage discrimination. The EEOC's Office of General Counsel Annual Report for FY2002 indicates that 13, or eight percent, of sex discrimination cases filed that year dealt with wage discrimination.⁴⁹ A still smaller percentage of cases are filed under the EPA.⁵⁰ Between FY1997 and FY2002, the EEOC filed 40 EPA cases – just two percent of the 1,782 cases filed with the EEOC. Further analysis⁵¹ reveals that the number of EPA cases filed by both men and women during this period went up and down from year-to-year:

- ③ Women filed most EPA charges. Over the last ten years, these charges fell by 13.5%, from 1,186 filed in FY1992 to 1,026 filed in FY2003. The number of EPA charges filed by White women declined by 19% from FY1992 to FY2003, from 797 to 642 charges. In contrast, African American women filed 30% more EPA charges in FY2003 than in FY2002, from 152 charges in FY2002 to 197 charges in FY2003. The number of charges filed by Hispanic women also went up, from 42 charges in FY1992 to 60 charges in FY2003 – a 43% increase. For Asian/Pacific Islander women, charges rose by 58% from FY1992 (12 charges) to FY2003 (19 charges). The number of charges filed by American Indian/Alaskan Native women varied slightly over the years, but ultimately remained flat at nine charges filed in both FY1992 and FY2003.
- ③ Men filed 103 EPA charges in FY1992 and 120 in FY2003, with a peak of 144 charges in FY1993. Over that time period, charges filed by men increased by 16.5%. While the number of EPA charges filed by White men has gone down by 22% (from 69 charges in FY1992 to 54 charges in FY2003), the number of charges filed by men of color has substantially increased. African American men filed 49 charges in FY2003, an 81% increase from FY1992, when they filed 27 charges. Hispanic men filed 15 charges in FY2003, a 114% increase from FY1992, when they filed just seven charges. The number of EPA charges filed by Asian/Pacific Islander and American Indian/Alaskan Native men was

too small to draw reliable conclusions. However, total charges by Asian/Pacific Islanders ranged from zero to six, and charges by American Indian/Alaskan Native men ranged from zero to three. No additional information is available about the substance of the claims filed by men. Thus, from the charge data, it is unclear whether the complaints involve men objecting to pay adjustments for female workers, allegations of discriminatory pay practices against men, or other claims. Further research is needed to get a better understanding of these complaints.

Analysis and Next Steps. Given that women from all different racial and ethnic backgrounds consistently identify unequal pay for equal work as a significant problem,⁵² the low number of EPA and wage discrimination cases at the EEOC is a source of concern. Women, both White women and women of color, and men of color all experience significant pay disparities when compared their White male counterparts. Although there are a variety of reasons for the differences, discrimination seems to play a significant role. The growth in the number of charges filed by women of color and men suggests that more workers of color are looking to the EPA to resolve pay disputes. At the same time, the declining overall number of EPA charges filed with the EEOC may reflect the difficulties associated with successfully bringing EPA claims.⁵³

To respond to persistent pay disparities, it is crucial that federal enforcement agencies undertake vigorous strategies to tackle discriminatory pay practices. Such efforts should include analyzing all available data to identify industries and occupations where gender- and race-based pay disparities are the sharpest, and using the full complement of agency investigatory tools to uncover discriminatory practices. Use of EEOC Commissioner charges, which are special investigations that can be initiated by individual EEOC Commissioners, is one tool that can be used to proactively investigate allegations of discriminatory practices in particular jobs or industries. Further, agencies such as the EEOC and the Office of Federal Contract Compliance Programs (OFCCP) can maximize their often-limited resources by sharing information on enforcement strategies and problems, consistent with existing information-sharing agreements.

E. Retaliation

Title VII's retaliation provision, found in 704(a),⁵⁴ prohibits discrimination against individuals either for participating in or assisting with a Title VII investigation or proceeding, or for opposing unlawful employment practices. To succeed with such a claim, an individual must prove that an employer took an "adverse action"⁵⁵ against him or her – for example, for complaining about workplace harassment or discrimination, reporting a violation of a workplace law, or working with state or federal enforcement agencies in their investigations of an employer. Examining the number of retaliation claims filed with EEOC is important because it helps to provide a fuller picture of the obstacles individuals face when trying to remedy workplace discrimination. The threat of retaliation by the employer often deters employees from coming forward and reporting discrimination because many are afraid of losing their jobs, being moved to other shifts, or facing hostility. Such deterrence has the practical effect of perpetuating discriminatory practices in the workplace that are antithetical to the goals of Title VII.

In FY2003, 22,690 retaliation charges were filed with the EEOC, making up 27.9% of the total charges – an increase of 104% since FY1992.⁵⁶ Retaliation charges trail only charges based on race and sex, suggesting that many employees are facing discriminatory employer practices or treatment when they act to rid a workplace of illegal discrimination. EEOC data⁵⁷ shows that women file many more retaliation charges than men, and that people of color file a disproportionate number of such charges. Specifically:

- ③ Women filed almost 60% more retaliation charges than men in FY2003 – women filed 12,512 charges while men filed 7,813 charges. This gender difference is reflected in each racial or ethnic category. White women filed more than double the number of retaliation charges than White men – 5,253 compared to 2,227. African American women filed eight percent more charges than African American men – 4,488 compared to 4,142. Hispanic women filed 37% more charges than Hispanic men – 1,230 compared to 899. Asian/Pacific Islander women filed two percent more charges than Asian/Pacific Islander men – 319 compared to 312. American Indian/Alaskan Native women filed 28% more charges than American Indian/Alaskan Native men – 77 compared to 60.
- ③ Increases in charges filed by women and men were roughly equal from FY1992 to FY2003. Charges by men increased by 96% (from 3,988 in FY1992 to 7,813 in FY2003), while charges by women increased by 94% (from 6,452 in FY1992 to 12,512 in FY2003).
- ③ Women and men of color filed a disproportionately higher number of retaliation claims. In FY2003, White men filed only eleven percent of the retaliation claims, men of color filed 27%, White women filed 26%, and women of color filed 30%.

Analysis and Next Steps. Even though Title VII prohibits employers from punishing employees for challenging discrimination, retaliation remains a serious and sizeable problem. Women, in particular, seem to be targets of alleged retaliatory actions by employers. This may be because women are perceived as “easy targets,” or there may be unique features of the work environments of many women workers that tolerate or even promote such conduct. Closer scrutiny is needed to determine whether certain types of allegations generate, or certain industries or occupations are more likely to tolerate, illegal retaliation. The EEOC should analyze relevant data to gain a better understanding of where these claims are likely to arise, and undertake specific efforts to challenge discriminatory practices. Further, federal law enforcement agencies should pursue the full range of investigatory and litigation enforcement strategies to deter unlawful conduct, promote fair workplace practices, and remedy discrimination. Advocacy groups and enforcement agencies also must work with employers to put clear policies against retaliation in place. Even before discrimination occurs in the workplace, it should be absolutely clear that the employer will not tolerate retaliation from supervisors, managers or other employees.

🕒 **F. Pregnancy Discrimination**

Almost 26 years ago, Title VII was amended to make clear that its prohibition against sex discrimination covered discrimination in employment based on pregnancy status. The amendment – appropriately called the Pregnancy Discrimination Act (PDA) – memorialized into law earlier court decisions holding that pregnancy discrimination constituted illegal sex discrimination under Title VII, and overturned a contrary opinion by the Supreme Court.⁵⁸ The law remains a critical tool for fighting pregnancy discrimination today. But even with this legal protection, pregnancy discrimination persists. With more than 68 million women in the nation’s

work force,⁵⁹ including 72.9% of women with children under age 18,⁶⁰ the EEOC has seen a 39% increase in the number of pregnancy discrimination charges filed since FY1992,⁶¹ even while the nation has seen a nine percent decrease in its birth rate.⁶²

While there is no single explanation for the rise in pregnancy discrimination claims, today more women are working while they are pregnant and they are working longer into their pregnancies. Fifty-five percent of women who gave birth in 2000 also worked that year.⁶³ Despite the fact that many courts and the EEOC consistently held that pregnancy discrimination was unlawful, in the decade before passage of the PDA, more than half of employed women quit their jobs when they became pregnant. By the early 1990s, that number had dropped to 26.9% of pregnant women.⁶⁴ At the same time, however, the number of pregnant women who were let go from their jobs rose from an all-time low of 2.3% in the late 1980s to 4.2% in the early 1990s – the first such increase since passage of the PDA.⁶⁵ In FY2002, the EEOC and state FEPAs received 4,714 charges alleging pregnancy discrimination – 39% more than the 3,385 charges filed in 1992.⁶⁶ In the same year, the EEOC resolved 4,778 pregnancy discrimination charges and recovered \$10 million in monetary awards for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).⁶⁷ Many claimants also filed lawsuits against their employers in court but, as discussed below, such lawsuits are extremely difficult for employees to win.⁶⁸

A related and emerging phenomenon involves mothers and fathers facing discrimination because of their family care responsibilities. Employers who believe that “mothers don’t belong in the workplace” or that “fathers don’t belong in the traditionally feminine role of family caregiver” may decide to exclude women, or men, from certain types of jobs. A growing number of cases challenge these practices, typically under Title VII.⁶⁹

Analysis and Next Steps. The growth in both pregnancy discrimination claims and claims by men and women who face discrimination because of their family care responsibilities demonstrates a continuing need for vigorous enforcement of Title VII, and public education for employees and employers about how the law works. Further, the EEOC should explore how Title VII can be used to challenge discriminatory employment practices related to an individual’s family responsibilities that may not be covered by the PDA. It is also important to look closely at all pregnancy-related discrimination claims that have been filed with the EEOC. Determining, for example, whether certain types of jobs generate more pregnancy discrimination claims than others, or whether different racial or ethnic groups experience more discrimination because of their family care responsibilities, would help target enforcement where it is needed the most.

🕒 *G. Discrimination, Intersectionality, and Making All Women Visible*

It is clear that multiple factors – such as race, ethnicity, age, gender, and disability status – can intersect and make it more likely that women will confront discrimination in the workplace. These “intersectional” issues are sometimes referred to as “compound discrimination,” or situations where discriminatory conduct is based on the combination of two or more factors.⁷⁰ Understanding where these intersectional issues arise is an important component of ensuring effective equal employment opportunity enforcement. Much of the data in this report, for example, reveals differences along racial and ethnic lines in terms of discrimination claims and trends. But there is rarely meaningful discussion by enforcement agencies about how to identify

and challenge special job discrimination problems that may be driven by the combined effects of gender, race, ethnicity, age, disability, and other factors.⁷¹ If law enforcement agencies ignore these intersectional issues, they will fail to remedy the discrimination that some workers face because of their unique status as women of color, older women, or immigrant women.

This report raises many different intersectional issues specifically in the context of Title VII enforcement, but there are other laws that also can help shed light on these concerns. In particular, the Age Discrimination in Employment Act⁷² (ADEA) and the Americans with Disabilities Act⁷³ (ADA), respectively, provide important protections for workers against age discrimination and disability discrimination. Although these statutes are separate from Title VII, it is useful to review the data about claims filed under these laws because a growing number of older and disabled working women are facing discrimination in the workplace. Indeed, the EEOC's enforcement data shows that charges filed by women under the ADEA and the ADA, and in particular by women of color, have gone up substantially in the last decade.⁷⁴ While it is unclear to what extent these claims are linked to gender *and* age or disability or some other factor, analyzing the charges filed with the EEOC provides a more complete picture of the problem.

- ③ **Age Discrimination:** The EEOC reports that, in FY2003, 19,124 age discrimination charges were filed, making up 23.5% of the total charges filed that year.⁷⁵ Age discrimination charges trail only race, gender, and retaliation claims in the total number of claims filed. Age discrimination complaints by women have gone up, particularly in the last two years, while complaints filed by men have gone down. In FY2003, women filed 9,406 charges, a 38.5% increase from FY1992 when they filed 6,791 charges. In FY1992, men filed 12,397 charges but in FY2003 they filed only 9,466 charges – a 24% decrease.
 - Charges filed by White women remained relatively constant over the last decade, increasing by less than two percent overall – from 4,604 charges in FY1992 to 4,682 charges in FY2003. Charges filed by women of color increased substantially from FY1992 to FY2003: charges filed by African American women increased by 54% from 1,130 to 1,739; charges filed by Hispanic women rose by 76% from 317 charges to 559; charges filed by Asian/Pacific Islander women rose by 112.5% from 96 charges to 204; and charges filled by American Indian/Alaskan Native women rose by 104.5% from 22 charges to 45.
 - Numbers for men also reflect racial and ethnic differences. The number of cases filed by White men has gone down significantly – from 8,428 charges filed in FY1992 to 5,867 charges filed in FY2003, a 30% drop. The numbers for men of color, however, went up during this same period – by 21% for African American men, from 1,273 charges in FY1992 to 1,536 in FY2003; by 35% for Hispanic men, from 663 to 898 charges; by 48% for Asian American men, from 168 to 248 charges; and by 11% for American Indian/Alaskan Native men, from 44 to 49 charges.
- ③ **Disability Discrimination:** In FY2003, 15,377 charges alleging disability discrimination were filed, constituting 18.9% of total charges.⁷⁶ For both men and women, charges based on disability discrimination increased gradually through the mid-1990s, but began to decrease around 1997 and 1998. This pattern tracks when the Supreme Court began

interpreting the ADA in a more restrictive manner, making it more difficult for claimants to prove their cases.⁷⁷

- Claims filed by both men and women have gone down since the mid-1990s, with women filing 7,373 charges and men filing 7,774 charges in FY2003 (from a high of 8,716 charges by women and 11,015 for men in FY1995).⁷⁸
- Despite the legal challenges faced by claimants filing charges under the ADA, the number of disability discrimination charges by women of color grew. In FY1995, African American women filed 1,731 charges, Hispanic women filed 436 charges, Asian/Pacific Islander women filed 92 charges, and American Indian/Alaskan Native women filed 56 charges. In FY2003, charges filed by African American women increased four percent to 1,807 charges, charges by Hispanic women increased 23% to 532, and charges by Asian/Pacific Islander women increased by 25% to 115 charges. Charges filed by American Indian/Alaskan Native women dropped by 14% to 48 charges in FY2003.
- Men's disability discrimination charges for this period tell a different story. Charges by White men decreased by 38% overall (from 7,749 to 4,769). Charges filed by men of color also dropped by 24%, from 1,844 to 1,403 for African American men and by ten percent, from 722 to 648 for Hispanic men. The number of charges filed by Asian/Pacific Islander and American Indian/Alaskan Native men went up slightly (Asian/Pacific Islander men by 22%, from 111 to 135; American Indian/Alaskan Native men by seven percent, from 60 to 64).

Analysis and Next Steps. Increasingly, age and disability are limiting job opportunities for women. This data underscores the importance of understanding the intersectional issues that can come into play for women at work, and identifying enforcement strategies that will address them. As noted throughout this report, it is critical for federal enforcement agencies to address these intersectional issues in their enforcement work to ensure that agencies do all they can to stop discrimination faced by women workers. In particular, agencies must generate enforcement data that can be broken down by multiple factors, examine the data to identify discrimination problems, and undertake aggressive enforcement strategies designed to remedy these problems. Women do not always experience discrimination solely on the grounds of gender, but also age, disability, health status, race, ethnicity, class, national origin, and sexual orientation. Understanding the dynamics between these different categories will help ensure that women are treated fairly on the job.

IV. FURTHER OBSTACLES TO ENDING EMPLOYMENT DISCRIMINATION: WOMEN AND PEOPLE OF COLOR MAY NOT BE TREATED FAIRLY IN FEDERAL COURTS

Even with the Civil Rights Act and Title VII in place to help ensure that women are treated fairly in the workplace, judges must enforce and interpret these laws in ways that will give women a fair opportunity to prove their cases in court. In FY2002, 84,442 discrimination charges were filed with the EEOC, but the agency filed only 364 lawsuits, 246 of which were filed under Title VII.⁷⁹ Because the EEOC litigates so few cases, individual plaintiffs are often forced to pursue

federal employment discrimination suits on their own. But, even when their cases are strong, plaintiffs lose much more often than they win.

Recent research indicates that plaintiffs in employment discrimination cases, and women and people of color in particular, face tough challenges in federal court – in pretrial matters, trials, and when these cases are appealed.⁸⁰ Although there was a sizeable increase in federal employment discrimination cases in the 1990s, employment discrimination plaintiffs win less often than other plaintiffs.⁸¹ While some differences might be expected, there is no reason to believe that plaintiffs in employment discrimination cases are significantly less likely to file legitimate claims than other plaintiffs.

Nor is there any evidence to suggest that claims filed by women and people of color are not as strong as claims filed by White men. Thus, the fact that employment discrimination plaintiffs collectively do substantially worse in federal courts than plaintiffs in non-employment discrimination cases bears close scrutiny. In judge and jury trials, employment discrimination plaintiffs won only 19.29% of judge trials and 37.7% of jury trials from 1970 to 2001. In comparison, other plaintiffs won 45.91% of their judge trials and 44.82% of their jury trials.⁸² Regarding appeals, plaintiffs appeal cases 17 times more frequently than employers in employment discrimination cases; yet, federal appellate courts reverse plaintiffs' victories far more than they reverse defendants' victories.⁸³

Few researchers have looked at employment cases and how plaintiffs fare in federal court through the lens of race and/or gender. The research that has been done, however, suggests that case outcomes can be driven by these as well as other factors. For example, looking at sexual harassment cases, one study found that the final outcome depended in part on the type of conduct involved, whether the plaintiff reported the harassment, whether the employer had a complaint process in place, whether there was physical contact, the composition of the workplace (i.e., predominantly male or predominantly female or mixed), and how long the harassment lasted.⁸⁴ Employees were more likely to win in cases involving sexual comments targeted at a particular person (57% success rate), and more likely to lose in cases where the employee never complained about the harassment (30% success rate).⁸⁵

A recent study examining California employment discrimination and wrongful discharge jury verdicts is informative. The study concluded, in part, that women and plaintiffs of color bringing such cases have low success rates in federal court.⁸⁶ For example, in race discrimination cases brought by non-Whites, plaintiffs only won 36% of the time. In race discrimination cases brought by non-Whites alleging discrimination other than harassment, plaintiffs only won 33% of the time. Of the four race discrimination cases brought by Whites (alleging “reverse discrimination”), plaintiffs won 100% of the time.⁸⁷ In cases brought by African American women alleging either sex discrimination and/or race discrimination, plaintiffs won only 17% of the time.⁸⁸ Women alleging age discrimination lost every case they tried, while men alleging age discrimination won 36% of the time.⁸⁹

These statistics raise serious questions about why women and people of color are losing their employment cases in such disproportionate rates in federal court. Empirical data suggests that these losses have much to do with the biases of juries and judges, which creates an “anti-plaintiff effect” for employment discrimination plaintiffs.⁹⁰ The lowest success rates are at the intersection of race and gender and race and age (with African American women and women

over age 40 faring the worst in employment discrimination cases), which supports the conclusion that race, gender, and age biases may affect case outcomes.⁹¹ This is important to understand if our nation is to address biases and ensure that its legal system operates free of discrimination.

V. CONCLUSION AND RECOMMENDATIONS: LOOKING AHEAD

Over the last 40 years, women have made significant progress in America's workforce. Title VII of the Civil Rights Act of 1964 has been central to these gains, but much work remains. Women still earn less than men for performing the same work; women still face persistent discrimination at work and are more likely to be retaliated against if they complain; and women may not have the same success in court as men when they bring discrimination claims. As our nation reflects on its past, and assesses the status of women in the workplace today, lessons from the last 40 years can help us achieve *true* equality for women and people of color:

- ③ Women are not all the same, but instead reflect the rich diversity of cultures and experiences that comprise our nation. These differences can play a role in the types of opportunities that women have, and the discrimination they face on the job. Ethnicity, race, class, disability, and age are often interwoven with gender, making the scope and nature of discrimination very difficult to assess and remedy. Thus, it is essential to collect and evaluate accurate data that reflects the experiences and identities of women. This information is crucial for advocates and enforcement agencies to vindicate the rights of women and to promote equal employment opportunity.
- ③ Federal agencies must vigorously enforce the law to ensure that all women are treated equitably in the workplace. Without effective enforcement, many victims of job discrimination – especially women of color, immigrants, and low-wage workers – will not be able to vindicate their legal rights because they cannot secure or afford a lawyer to bring a private claim. Enforcement efforts must:
 - Focus on the many different faces of gender discrimination, with targeted efforts to identify unique discrimination problems facing different groups of women and to understand the intersectional issues that may affect their job experiences;
 - Stress the importance of looking behind the numbers because aggregate numbers can mask what is really happening to different groups of women, including women of color;
 - Include stepped up litigation efforts to challenge discriminatory practices, particularly systemic practices that can deny opportunities to many women throughout a company or industry;
 - Develop legal and investigative strategies to tackle compound discrimination;
 - Focus on improving the quality, scope, and analysis of data collection to gain a better understanding of the experiences of different women workers;
 - Target industries or jobs where women may be encountering discrimination; and
 - Include comprehensive education and outreach with employers, employees, and community-based organizations to ensure that the law is well-understood.

Each federal agency with responsibility for enforcing employment discrimination laws and regulations should ensure that its annual enforcement plans incorporate these strategies.

Specifically this means, in the short-term, that agencies such as the EEOC, OFCCP, and the Civil Rights Division at the Department of Justice (DOJ-CRD) should take steps to improve the quality of their data and generate comprehensive statistics on discrimination claims (broken down by multiple factors such as race, ethnicity, and gender) and agency litigation efforts.

Many agencies publish general charge data that is not broken down by race, ethnicity, gender, or other factors. To the extent that agencies can report reliable data in more refined categories, it will be easier to identify specific problems that may be affecting particular groups of women. Recent reports by the EEOC, for example, on glass ceiling issues facing women in management and the employment of women of color are important steps forward, but more must be done.

Some agencies do not publish comprehensive enforcement data on a regular basis – for example, over the past three years, it has been extremely difficult to get reliable information on the number of employment discrimination cases filed by DOJ-CRD, particularly those involving disparate impact claims.

Further, to the extent agencies have specific tools available – such as EEOC Commissioner charges, or special inter-agency memoranda of understanding calling for joint enforcement efforts – they should be used to maximize federal enforcement resources. In addition, it also is important to measure agency progress. Thus, agencies should evaluate and report each year on the effectiveness of specific enforcement efforts for different groups of women, and determine what has worked, what has not worked, and what modifications may be needed.

Because of the scope and complexity of discrimination in our workplaces, it is important for federal agencies, employers and advocacy groups to collaborate – helping to identify and resolve the numerous employment discrimination issues that arise. Discussions, information-sharing, and educational outreach will help our nation tackle discriminatory practices that prevent people of color and women from being treated fairly in their jobs. More research is needed to explore the different types of discrimination problems facing women on the job and in the courtroom when they pursue their claims.

Finally, legislative action is needed to remedy existing discrimination problems. In recent years, the Supreme Court has weakened the civil rights laws that play a crucial role in protecting women from discrimination in the workplace. These Supreme Court decisions have cut back on fundamental legal protections for women and people of color. As a result, Congress should remedy limitations in the law by passing measures such as the Civil Rights Act of 2004, which will allow victims of wage discrimination to recover compensatory and punitive damages and prohibit employers from retaliating against employees who share wage information that helps detect disparities. The bill will also eliminate damages caps that severely limit the monetary amount available to victims of sex discrimination, allowing victims of sex discrimination to receive the same damages that victims of other types of discrimination can receive. Finally, the bill will prevent employers from forcing workers to sign away their right to a day in court through mandatory arbitration clauses. Passing laws like the Civil Rights Act of 2004 will help restore Congress' rightful role in protecting victims against discrimination based on sex, race, color, national origin, disability, and age.

Forty years after the historic passage of the Civil Rights Act of 1964, our nation has seen important progress for women and men in the workplace. The principles of equal employment

opportunity enshrined in that landmark law remain central to our national goal of equality for all people. But much work remains. Too many women of all races and people of color continue to face discrimination in the workplace – discrimination based on their gender, race, national origin, age, disability, or other characteristics. It’s time to look more closely at the discrimination that continues today and take more vigorous action to eradicate it. Only when we do that will we fulfill the promise made in 1964.

ENDNOTES

¹ Robert C. Bird, *More Than A Congressional Joke: A Fresh Look At the Legislative History of Sex Discrimination of the 1964 Civil Rights Act*, 3 WM. & MARY J. WOMEN & L. 137, 151 (1997).

² *Id.* at 150-1.

³ 42 U.S.C. §2000e.

⁴ The Act was comprised of multiple sections, including Title I, Title II, Title IV, Title V, Title VI, and Title VII. Title I of the Act guarantees equal voting rights by removing registration requirements and procedures that undermined the rights of people of color. Title II prohibits segregation or discrimination in places of public accommodation involved in interstate commerce. Title IV calls for the desegregation of public schools, Title V broadens the duties of the U.S. Civil Rights Commission, and Title VI assures nondiscrimination based on race and national origin in federally funded programs. Title VII bans employment discrimination based on race, color, national origin, religion, and sex; and also established the Equal Employment Opportunity Commission to enforce these provisions.

⁵ 110 CONG. REC. 2577-84 (1964).

⁶ See Susan Estrich, *Sex at Work*, 43 STAN. L. REV. 813, 816-7 (1991) (“[The Civil Rights Act]’s proponents included a number of Congressmen opposed to the Act, who hoped that the inclusion of the word “sex” would highlight the absurdity of the effort as a whole...”); Jo Freeman, *How “Sex” Got into Title VII: Persistent Opportunism as a Maker of Public Policy*, 9 LAW & INEQUALITY 163 (1991) (“[The prohibition of sex discrimination employment] was the product of a small but dedicated group of women, in and out of Congress, who knew how to take advantage of the momentum generated by a larger social movement to promote their goals”).

⁷ Bird, *supra* note 1.

⁸ See, e.g., *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

⁹ This report cites workforce data from a variety of sources, including the Department of Labor (DOL), the EEOC, and numerous research organizations. Many of these sources use different terminology to identify different racial and ethnic categories, e.g., some use the term “Black” while others use the term “African American.” In writing this report, the National Partnership decided to use the same terminology consistently rather than alternate between different terms. Thus, in most circumstances in this report, the following racial/categories are used: African American, Asian/Pacific Islander, Hispanic, White, and American Indian/Alaskan Native. The National Partnership also used the terms “women of color,” “men of color,” or “people of color” in this report rather than “minority” or “minorities.” Although there are differing views on which term is most appropriate, the National Partnership chose to use the more contemporary terminology, e.g., “women of color,” et. al. As used throughout this report, these terms – women of color, men of color, and people of color – are intended to include all Hispanics, who can be of any race.

¹⁰ See <http://www.dol.gov/wb/stats/main.htm> and main Department of Labor website, <http://www.dol.gov>.

¹¹ *Id.* Computations to determine the percentage of women of color in the workforce were done by the National Partnership with the assistance of staff members at the Department of Labor.

¹² Asian/Pacific Islander workers will make up six percent of the workforce by 2021, a 51% increase over the ten-year period starting in 2002. The number of Hispanic workers is projected to increase by nearly six million between 2002 and 2012. This growth means that Hispanic workers will account for more than one-third of the total U.S. labor force by 2012. The growth of the Hispanic labor force amounts to a 33% increase – a rate more than three

times as fast as that of non-Hispanic workers over the same period. See Labor Force Occupational Outlook Quarterly, Winter 2003-04, available at <http://www.bls.gov/opub/ooq/ooqhome.htm>

¹³ Women of color labor force participation rates are highest among Hispanics (68%), Native Hawaiians and other Pacific Islanders (64%), and African Americans (62%). The rates for Asians and American Indian/Alaskan Native women are lower, at 58%. *Supra* note 10. For rates of Native Hawaiians and other Pacific Islanders and American Indian/Alaskan Native women, we obtained unpublished data from staff at the DOL's Bureau of Labor Statistics.

¹⁴ 20 leading Occupations of Employed Women Full-Time Wage and Salary Workers, available at <http://www.dol.gov/wb/factsheets/20lead2003.htm> Looking at the same Bureau of Labor Statistics data for men reveals that men are also employed in more male-dominated jobs. The top five jobs for men in 2003 were: drivers/sales workers and drivers (96.6% male), first-line supervisors/managers of retail sales workers (58%), retail salespersons (58%), laborers and freight, stock, and material movers (84.8%), and janitors and building cleaners (74%). See "Household Data Annual Averages for Full-time Wage and Salary Workers, 2003," Table 39, available at <http://www.bls.gov/cps/cpsaat39.pdf>

¹⁵ "Women of Color: Their Employment in the Private Sector," U.S. Equal Employment Opportunity Commission (2003), at 4-7, available at www.eeoc.gov. ("Women of Color Report").

¹⁶ Matthew S. Scott, *For women, the glass ceiling persists*, BLACK ENTERPRISE (August 2001), (magazine, p8) (citing Catalyst report titled "2000 Catalyst Census of Women Corporate Officers and Top Earners).

¹⁷ *Id.* Women of color accounted for 10.3% of the 1,297 women officers at the 400 Fortune 500 Companies that participated in this survey (84 African Americans, 27 Asian/Pacific Islanders, 21 Hispanics and two "Other"). Out of these 1,297 women, women of color accounted only for 1.3% of the top officer positions. The officer titles used for the survey included: CEO, chairman, vice chairman, president, chief operating officer, senior executive vice president, and executive vice president.

¹⁸ "Glass Ceilings: The Status of Women as Officials and Managers in the Private Sector," at 1, available at <http://www.eeoc.gov/stats/reports/glassceiling/> ("Glass Ceilings Report").

¹⁹ "Women's Economic Status in the States: Wide Disparities by Race, Ethnicity, and Religion," at 16-17, Institute for Women's Policy Research (2004) ("IWPR Report").

²⁰ "Median weekly earnings of full-time wage and salary workers by selected characteristics, 2003," Table 37, available at <http://www.bls.gov/cps/cpsa2003.pdf>. It is important to look behind the numbers to get a complete picture of women's earnings. For some women in particular, these numbers may tell only part of the story. For example, Asian/Pacific Islander women as a group earn more than White women, but also are more likely to live in poverty. The wage disparity between Japanese Americans and Vietnamese Americans is almost \$13,000 with Japanese Americans earning \$39,300 and Vietnamese Americans earning \$26,500. See IWPR Report, *supra* note 19, at 24. In addition, figures for Asian/Pacific Islander and Hispanic women may not reflect fully their true economic status because of their disproportionately high representation in certain types of low-wage work, including in the garment industry, high tech assembly work in Silicon Valley, and domestic work. See Lora Jo Foo, *Asian American Women: Issues, Concerns, and Responsive Human and Civil Rights Advocacy*, Ford Foundation, 2003. The statistics generated by the Department of Labor and EEOC may not capture the extent to which women are working in these jobs because the jobs often are part of a vast underground economy where wages are paid as cash under the table. Foo, *Id.* at 86. For further reading on Asian/Pacific Islander domestic workers and those working in garment factories and their efforts to organize, see Ai-Jen Poo and Eric Tang, *Domestic Workers Organize in the Global City*, in *THE FIRE THIS TIME* 150-65 (Vivien Labaton and Dawn Lundy Martin eds., 2004).

²¹ In this report, we define low-wage jobs as jobs paying wages that would result in employees earning at or below the federal poverty level. Low-wage workers are defined as workers earning wages at or below the federal poverty level. In 2001 dollars, these workers earned \$8.70 per hour and lower. See Lawrence Michel, Jared Bernstein, and Heather Boushey, *The State of Working America 2002-2003*, at 133-39, Economic Policy Institute. See also Marlene Kim, *Women paid low wages: who they are and where they work*, MONTHLY LABOR REVIEW, 26 (2000).

²² Michel, Bernstein, and Boushey, *Id.*

²³ U.S. Department of Labor, Bureau of Labor Statistics, *Labor Force Participation Rates Among Mothers*, available at <http://www.bls.gov/opub/working/page16b.htm>.

²⁴ This 180-day filing deadline is extended to 300 days if the charge is also covered by a state or local anti-discrimination law. Many states and localities have anti-discrimination laws and Fair Employment Practice Agencies (FEPAs) that are responsible for enforcing those laws.

²⁵ The number of sex discrimination complaints discussed in this section includes complaints filed under the Pregnancy Discrimination Act, a 1978 amendment to Title VII clarifying that Title VII's sex discrimination prohibition includes discrimination based on pregnancy. A section that solely looks at pregnancy discrimination complaint filings follows later in this report.

²⁶ *See Charge Statistics, FY1992 Through FY2003*, available at www.eeoc.gov/stats/charges.html. These charge statistics include only charges filed with the EEOC and not those filed with FEPAs. These numbers represent total charges filed by individuals with the EEOC each fiscal year. A single complaint can include multiple claims of discrimination. For instance, one person may experience discrimination based on both race and sex. Therefore, the total number of charges is less than the sum of all of the discrimination claims filed each year.

²⁷ To analyze recent discrimination trends, the National Partnership requested data from the EEOC, Program Planning and Analysis Division detailing the racial, ethnic, and gender breakdowns of charges filed under Title VII, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the Pregnancy Discrimination Act (PDA) for the period FY1992 to FY2003. The National Partnership received charts listing the number of charges filed by women and men, broken down by race and ethnicity, alleging discrimination based on sex, race, disability, national origin, religion, and age. The same breakdowns for charges alleging retaliation, sexual harassment, and discriminatory pay practices also were received. The data is informative because it provides a better picture of the job discrimination problems facing women and men over a ten-year period. But there are important parameters and/or limits to the data to keep in mind. First, the charts generated by EEOC only include numbers of charges filed with the EEOC; charges filed with local Fair Employment Practice Agencies (FEPAs) were not included in the calculations. Second, there may be some overlap in the different racial/ethnic categories, primarily because charging parties can file under multiple races, and Hispanics may be of any race. Third, the charge number totals we received are different from, and mostly lower than, the total number of charges already publicly reported by EEOC (e.g., posted on the EEOC's website). This is because some complaints have incomplete information, e.g., a complainant did not identify his/her race or gender, and were not included in the specific breakdown we requested; or because the data may have been processed and analyzed at different times. Telephone Interview with James Goldweber, Director of the EEOC's Program Planning and Analysis Division (May 19, 2004). While complainants/charging parties may not state their gender or race, or this information may not be entered into the EEOC's database, EEOC analysts and researchers estimate that approximately 95% of claimants do provide this information. Telephone Interview with Joel Gronning, Analyst and Statistician with EEOC, Program Planning and Analysis Division (April 17, 2004).

²⁸ The remaining percentage did not provide racial or ethnic information. *Id.*

²⁹ *Id.*

³⁰ *See infra* note 71.

³¹ *Williams v. Saxbe*, 1976 WL 605 (1976). Diane Williams claimed she was sexually harassed by her boss and that the harassment was a violation of Title VII. The court found that her boss' action violated Title VII when he fired her after she refused to grant him sexual favors.

³² *Barnes v. Costle*, 561 F.2d 983 (1977) (holding that the elimination of a female government employee's job because she rejected her male superior's sexual advances violated Title VII). This case was litigated by the National Partnership, known at that time as the Women's Legal Defense Fund.

³³ *Meritor Savings Bank v. Vinson*, *supra* note 8. The Court recognized two types of sexual harassment – *quid pro quo*, where submission to an unwelcome sexual advance is made a term or condition of an individual’s employment; and hostile work environment, where unwelcome sexual remarks or conduct alter the work environment or conditions for an employee.

³⁴ In FY1992, the EEOC and FEPAs received 10,532 charges compared to 13,566 received in FY2003. “Sexual Harassment Charges EEOC & FEPAs Combined: FY1992-FY2003,” available at www.eeoc.gov/stats/harass.html. Although the unpublished data the National Partnership received from the EEOC do not include FEPA numbers, in some cases like this one, the EEOC’s published statistics do include FEPAs.

³⁵ *Id.* The 13,566 charges only represent the number of sexual harassment charges filed with the EEOC and FEPAs under federal law. It does not include state law claims, nor does it include any estimated number of unreported claims.

³⁶ *Id.* The EEOC’s unpublished charge data reveals that between FY1992 and FY2003 sexual harassment charges filed by men increased by 146%, going from 459 charges filed in FY1992 to 1,128 charges filed in 2003. *Supra* note 27. Charges for all men – both white and men of color – increased across the board:

- In FY1992, white men filed 280 sexual harassment charges, but in FY2003, they filed 636 charges, an increase of 127%
- In FY1992, African American men filed 120 charges, but in FY2003, they filed 285 charges, an increase of 137.5%.
- In FY1992, Hispanic men filed 42 charges, but in FY2003, they filed 124 charges, an increase of 195%.
- In FY1992, Asian/Pacific Islander men filed four charges, but in FY2003, they filed 20 charges, an increase of 400%.
- In FY1992, American Indian/Alaskan Native men filed one charge, but in 2003, they filed eight charges, an increase of 700%.

We did not have information on case fact-patterns to determine, for example, whether the cases involved mostly male-female or same-sex harassment scenarios, or other trends.

³⁷ *Supra* note 27.

³⁸ Nikki Katz, “Sexual Harassment Statistics in the Workplace and in Education,” available at <http://womensissues.about.com/cs/sexdiscrimination/a/sexharassstats.htm>. See also the National Partnership’s factsheet on sexual harassment, “Know Your Rights: Sexual Harassment, On the Road from Welfare to Work,” available at <http://www.nationalpartnership.org>.

³⁹ See, e.g., *Sex Harassment in Medical Field*, World/Nation Briefs, NEWSDAY, February 23, 1998 (reporting that more than one-third of female doctors who responded to a survey say they have been sexually harassed); L.W. LeBreton and S.S. Loevy, *Breaking New Ground: Worksites 2000*, Chicago Women in Trades, Chicago, 1996 (finding that 88% of Chicago-area tradeswomen survey respondents reported being sexually harassed in construction jobs).

⁴⁰ For example, the Chicago Tribune reported that in 1992 the EEOC logged a record of 9,920 harassment complaints, a rise of 50% from the prior year, in the wake of the Clarence Thomas-Anita Hill hearings. One organization, 9to5, reported receiving 2,000 calls during the time of the hearings from women who said they were not aware that the behavior they endured on the job was illegal. Gail Schmoller Philbin, *Silent Majority: Before laws made it illegal, sexual harassment was often swept under the rug. Guess what? Most times it still is.* CHICAGO TRIBUNE (February 24, 2004).

⁴¹ *Id.*

⁴² Just as with sex discrimination, it is unlawful to discriminate against any employee or applicant because of his/her race, color, or national origin in hiring practices, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. See *EEOC Factsheet on Race Discrimination*, available at <http://www.eeoc.gov/facts/fs-race.html> and *EEOC Factsheet on National Origin Discrimination*, available at <http://www.eeoc.gov/facts/fs-nator.html>.

⁴³ *Supra* note 27.

⁴⁴ *Supra* note 26.

⁴⁵ *Supra* note 26.

⁴⁶ EEOC, Office of General Counsel Annual Report, Fiscal Year 2002 (“EEOC Annual Report”), at 28, *available at* <http://www.eeoc.gov/litigation/02annrpt.html>.

⁴⁷ United States General Accounting Office (GAO) Report to Congressional Requesters, “Women’s Earnings, Work Patterns Partially Explain Difference Between Men’s and Women’s Earnings” (2003). The GAO report also confirms that only a portion of the differences between women’s and men’s earnings can be attributed to measurable differences in human capital.

⁴⁸ The Equal Pay Act, 29 U.S.C. §206, was passed in 1963 as an amendment to the Fair Labor Standards Act. It prohibits employers from paying unequal wages based on gender for equal work. The Act protects both men and women, but was passed to help narrow wage disparities experienced by female workers because of longstanding discrimination. The EPA is enforced by the EEOC. Executive Order 11246 protects employees of covered federal contractors and subcontractors from employment discrimination because of race, color, religion, sex, and national origin. The Executive Order also requires these employers to take affirmative action to remedy discrimination or correct workforce disparities. E.O. 11246 and its regulations are administered and enforced by the DOL’s Office of Federal Contract Compliance Programs (OFCCP).

⁴⁹ *Supra* note 46.

⁵⁰ Although the EPA is a separate law from Title VII, *see* discussion *supra* note 46, we include EPA data in this report to present a more comprehensive picture of the outcomes in cases alleging unequal pay practices.

⁵¹ *Supra* note 27.

⁵² “Equal Pay for Working Families: National and State Data” (citing AFL-CIO’s ‘Ask a Working Women’ Survey), *available at* <http://www.aflcio.org/issuespolitics/women/equalpay/EqualPayForWorkingFamilies.cfm>.

⁵³ Under the EPA, the claimant must prove that the workers being compared are doing “substantially equal work” for jobs requiring “equal skill, effort, and responsibility, and which are performed under equal working conditions.” 29 U.S.C. §206. *See also* Joan C. Williams and Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN’S L.J.77 (2003). Courts have interpreted these terms narrowly, thus making it hard for women to prove that different jobs involve substantially equal work. Further, the law includes exceptions that permit unequal pay under certain circumstances – when such distinctions are linked to a seniority system, a merit system, a system that pays according to quantity or quality of production, or any factor other than sex. Employers often attempt to defend their discriminatory practices by claiming that the pay disparity is based on factors other than sex, and it can be hard for plaintiffs to prove that such factors are actually linked to sex discrimination. *Id.* In addition, even though a charging party may file a claim under Title VII alleging that a pay disparity was based on sex discrimination, there are also legal limitations under this theory. Allegations of discrimination, including sex discrimination, under Title VII require proof of discriminatory intent. This intent requirement can be difficult to prove for many potential plaintiffs, in part, because the legal terms have been narrowly interpreted by many federal courts.

⁵⁴ 42 U.S.C. §2000e-3(a).

⁵⁵ The term “adverse action” can include, among other things: demotion, disciplinary action, firing, salary reduction, negative evaluation, change in job assignment, or change in shift assignment. Retaliation also can involve hostile behavior or attitudes aimed at an employee who complains about discrimination. For a detailed discussion on retaliation and what constitutes an “adverse action,” *see* Nancy Landis Caplinger and Diane S. Worth, *Vengeance Is Not Mine: A Survey of the Law of Title VII Retaliation*, 73-APR J. KAN. B.A. 20 (2004).

⁵⁶ *Supra* note 26.

⁵⁷ *Supra* note 27.

⁵⁸ In *General Electric v. Gilbert*, 96 S.Ct. 401 (1976), the Supreme Court held that an employer's disability benefits plan that failed to provide coverage for pregnancy-related disabilities did not discriminate against women in violation of Title VII.

⁵⁹ See *supra* note 10, available at <http://www.dol.gov/wb/stats/main.htm> and <http://www.dol.gov>.

⁶⁰ U.S. Department of Labor, Bureau of Labor Statistics, available at <http://www.bls.gov/opub/working/page16b.htm>.

⁶¹ "Pregnancy Discrimination Charges EEOC & FEPAs Combined: FY1992- FY2003," Office of Research, Information, and Planning, EEOC, online at www.eeoc.gov/stats/pregnanc.html. These numbers include charges of pregnancy discrimination filed with the EEOC and FEPAs under federal law. Charges alleging state law violations are not included in the total numbers. Further, although the National Partnership received unpublished data from EEOC breaking down pregnancy discrimination claims by gender and race/ethnicity, that information is not included in this report because of special limitations associated with the data. Because the EEOC's database captures information on charges related to pregnancy in multiple ways, it was difficult to determine to what extent the charge numbers the National Partnership received involved actual PDA claims as opposed to cases where pregnancy-related issues were involved in a case.

⁶² "U.S. Birth Rate Reaches Record Low," National Center for Health Statistics press release, June 25, 2003, available at <http://www.cdc.gov/nchs/pressroom/03news/lowbirth.htm>; "Revised Birth and Fertility Rates for the 1990s and New Rates for Hispanic Populations, 2000 and 2001: United States," National Vital Statistics Reports vol. 51 no. 12, August 4, 2003.

⁶³ Amar Bachu and Martin O'Connell, "Fertility of American Women: June 2000." Current Population Reports, P20-543RV, U.S. Census Bureau, 1-12, at 6 (October 2001).

⁶⁴ Kristin Smith et al., "Maternity Leave and Employment Patterns: 1961-1995." Current Population Reports, P70-79. U.S. Census Bureau, 1-20, at 11 (November 2001).

⁶⁵ *Id.*

⁶⁶ "Pregnancy Discrimination Charges EEOC & FEPAs Combined: FY1992-FY2002," *supra* note 58. See also

⁶⁷ Pregnancy Factsheet, Equal Employment Opportunity Commission, available at <http://www.eeoc.gov/types/pregnancy.html>. See also the National Partnership's factsheet on pregnancy discrimination, "Know Your Rights: Pregnancy Discrimination, On the Road from Welfare to Work," available at <http://www.nationalpartnership.org>.

⁶⁸ Susan Mendel, *Empirical Study Suggests Bias in U.S. Appellate Courts, Equal Treatment? Study shows a wide gap between worker, employer wins in job bias appeals*, AMERICAN BAR ASSOCIATION, November 1, 2001 (citing a study conducted by Professors Theodore Eisenberg and Stewart J. Schwab in 2001 which found that federal appellate courts reversed employees' victories in 44% of employment discrimination cases, but reversed employers' victories in only 6% of cases, a larger gap than in any other case category).

⁶⁹ See Joan Williams and Nancy Segal, *The New Glass Ceiling: Mothers – and Fathers – Sue for Discrimination* (Families That Work: The Program on Gender, Work & Family, American University, Washington College of Law, August 2002).

⁷⁰ See Kimberle Crenshaw, *Mapping the Margin: Intersectionality, Identity Politics, and Violence against Women*, 43 STNLR 1241 (1991).

⁷¹ For a detailed discussion of compound discrimination claims, see Kimberlie K. Ryan, *Compound Discrimination: Closing the Loop in Age and Sex Claims*, 28-JUN COLO. LAW. 5 (1999); Virginia W. Wei, *Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender and National Origin*, 37 B.C. L. REV. 771 (1996).

⁷² The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-634, prohibits employers from discriminating in employment against employees and applicants 40 years of age or older on the basis of their age. The law protects workers from age discrimination in various phases of employment, including interviewing, hiring, compensation, promotion, discipline, job evaluations, demotion, training, job assignments and termination. It applies to private employers with 20 or more employees and to federal and local governments.

⁷³ Passed in 1990, the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213, prohibits employers from discriminating in employment against individuals with disabilities. It also prohibits employers from refusing to hire someone or discriminating against someone because that person is related to or associates with someone with a disability.

⁷⁴ The rise in the number of disability discrimination charges filed with the EEOC may be due, in part, to the fact that the statute outlawing disability discrimination was passed fairly recently in 1990. But this does not explain the more recent rise in the number of disability discrimination charges filed by women of color, or the rise in age discrimination claims.

⁷⁵ *Supra* note 26.

⁷⁶ *Supra* note 26.

⁷⁷ See generally Stephen F. Befort and Holly Lindquist Thomas, *The ADA in Turmoil: Judicial Dissonance, the Supreme Court's Response, and the Future of Disability Discrimination Law*, 78 OR. L. REV. 27, 103 (1999) (explaining that “*Sutton* is a resounding pro-employer victory”); Stephanie Beige, *Sutton v. United Airlines, Inc.: The Supreme Court “Substantially Limits” the Americans with Disabilities Act*, 16 TOURO L. REV. 1441, 4161 (2000) (arguing that “the Supreme Court’s decision...will leave unprotected the class of individuals the ADA was enacted to protect”); Frank S. Ravitch and Marsha B. Freeman, 77 DENV. L. REV. 119, 163 (1999) (concluding that “[t]he Court seems afraid that too many people will be protected under the ADA, and that employees will suffer as a result”); Joseph A. Reinert and Marilyn A. Mahusky, *U.S. Supreme Court ADA Review: A Shifting Landscape*, 28-JUN VT. B.J. 37 (2002) (explaining that “[r]ecent U.S. Supreme Court decisions under the Americans with Disabilities Act have significantly changed the landscape for individuals with disabilities and their families...”); Bonnie Poitras Tucker, *The Supreme Court’s Definition of Disability Under the ADA: A Return to the Dark Ages*, 52 ALA. L. REV. 321, 373 (2000) (concluding that “[t]he Supreme Court has taken many people with disabilities back to the dark ages...”).

⁷⁸ We compared charges filed between FY1995 and FY2003 because the statute was not passed until 1990, and as a result, numbers from the early nineties may not capture the extent of disability discrimination experienced by men and women.

⁷⁹ EEOC Litigation Statistics, FY1992 through FY2003, available at <http://www.eeoc.gov/stats/litigation.html>; Chad Egan Burton, *EEOC v. Waffle House: Employers Win, Again*, 71 DEFCJ 52, 62-63 (2004).

⁸⁰ Kevin M. Clermont and Stewart J. Schwab, *How Employment Discrimination Plaintiffs Fare in Federal Court*, JOURNAL OF EMPIRICAL LEGAL STUDIES (Vol. 1, Issue 2) (2004). The study analyzed data collected by the Administrative Office of the U.S. courts on federal employment discrimination litigation, and examined the outcome of every civil case concluded in the federal courts from fiscal year 1970 to 2001 (the most recently released data).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* Plaintiffs brought 7,667 appeals cases while defendants brought 456 appeals.

⁸⁴ Ann Juliano and Stewart Schwab, *The Sweep of Sexual Harassment Cases*, 86 CORNELL L. REV. 548 (2001).

⁸⁵ *Id.*

⁸⁶ See David Benjamin Oppenheimer, *Verdicts Matter: An Empirical Study of California Employment Discrimination and Wrongful Discharge Jury Verdicts Reveals Low Success Rates for Women and Minorities*, 37 U.C. DAVIS L. REV. 511 (2003).

⁸⁷ *Id.* at 549.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 24. See also Kevin M. Clermont & Theodore Eisenberg, *Plaintiffphobia in Appellate Courts: Civil Rights Really Do Differ From Negotiable Instruments*, 2002 U. ILL. L. REV. 947, 965-67 (2002) (finding that defendants succeed more than plaintiffs on appeal from civil trials using a database that combines all federal civil trials and appeals cases decided since 1988); Kevin M. Clermont & Theodore Eisenberg, *Anti-Plaintiff Bias in the Federal Appellate Courts*, 84 JUDICATURE 128 (2000) (concluding that defendants succeed significantly more often than plaintiffs on appeal from civil trials especially from jury trials).

⁹¹ Oppenheimer, *Id.* at 561.

Chart A-1: Employment of Women in U.S. Labor Market in 2003
 Source: Current Population Survey 2003, Bureau of Labor Statistics

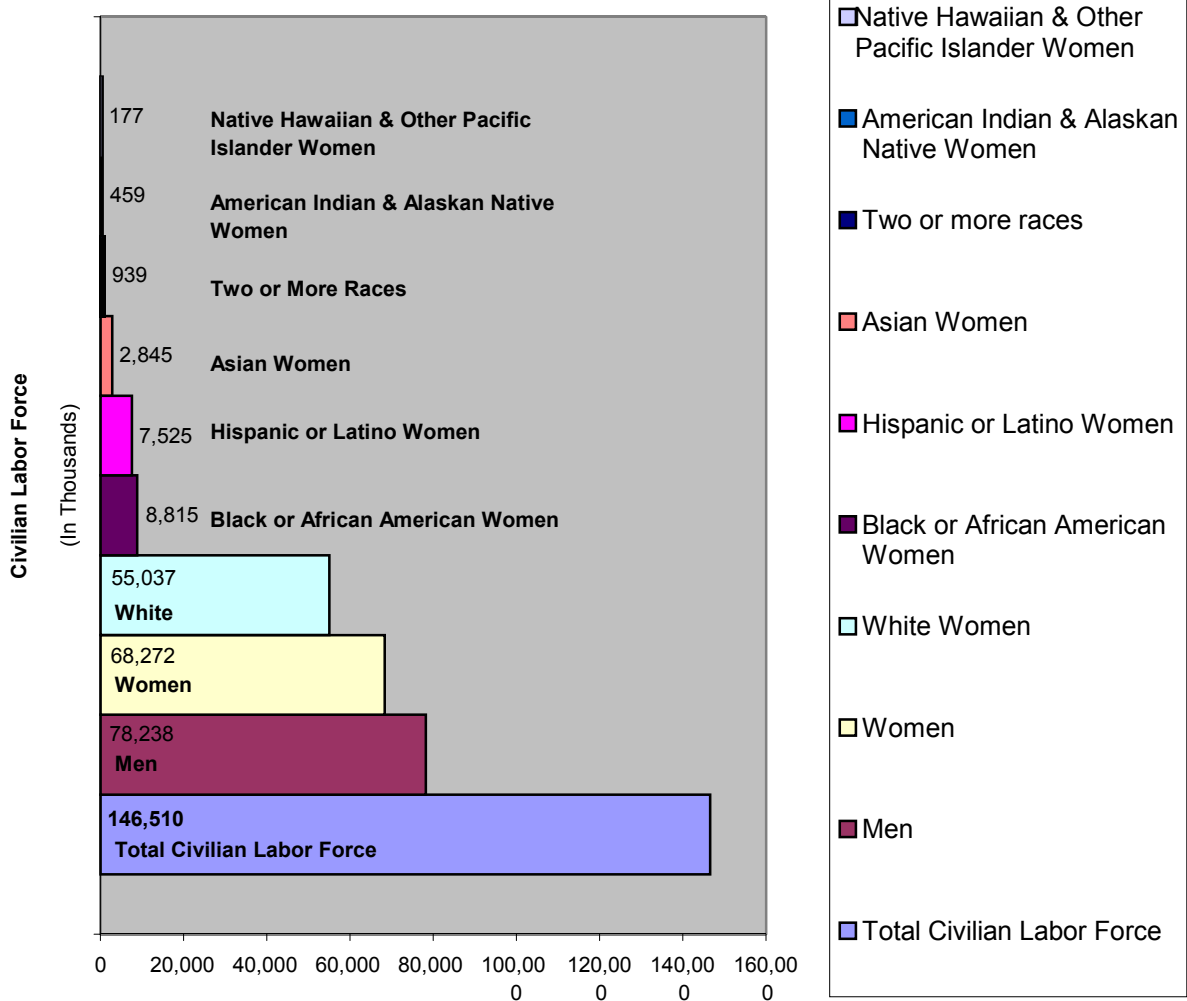
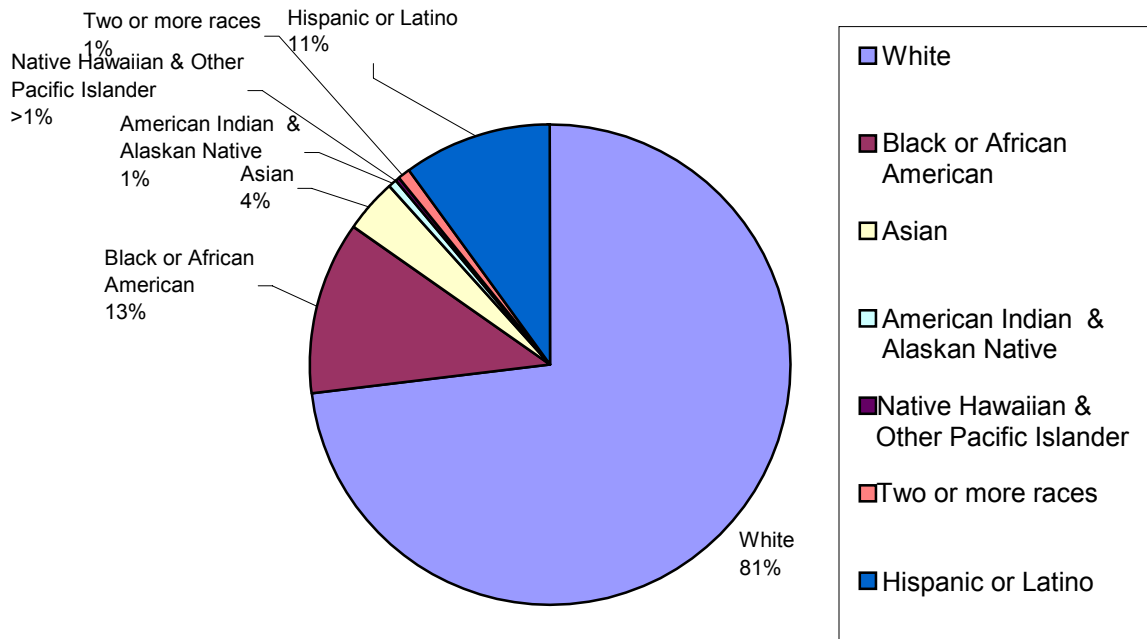


Chart A-2: Employment of Women in U.S. Labor Market in 2003
Percent of All Women Workers



Source: Current Population Survey 2003, Bureau of Labor Statistics.
 Note: Percentages above exceed 100% because racial category of Hispanic or Latino may account for any race.

Chart B: Percentage of Women in Managerial Jobs
Source: U.S. Equal Employment Opportunity Commission
Characteristics of Private Sector Employment 2003

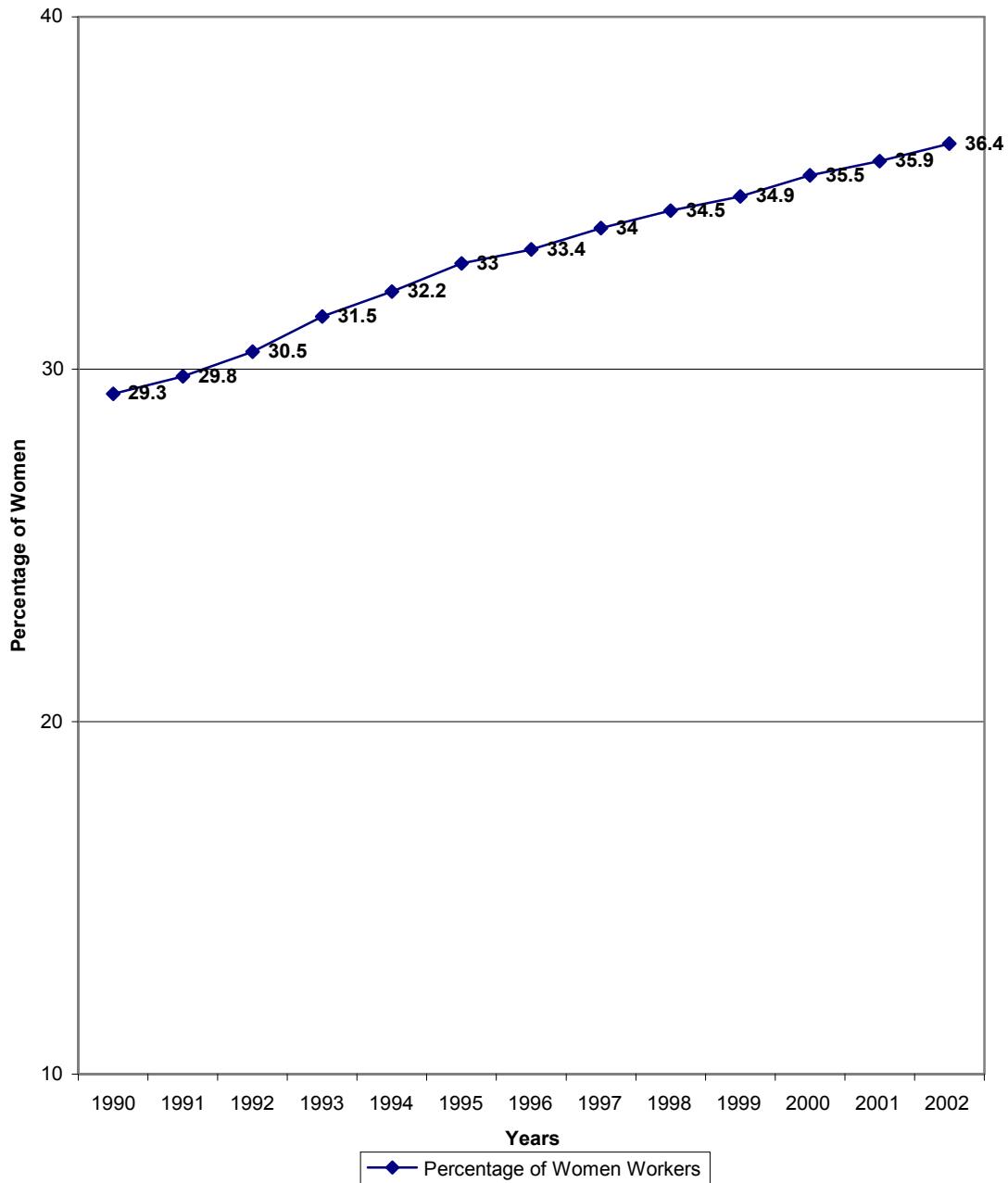


Chart C: Median Weekly Earnings of Full-Time Wage & Salary Workers

Source: U.S. Department of Labor, Bureau of Labor Statistics, 2003

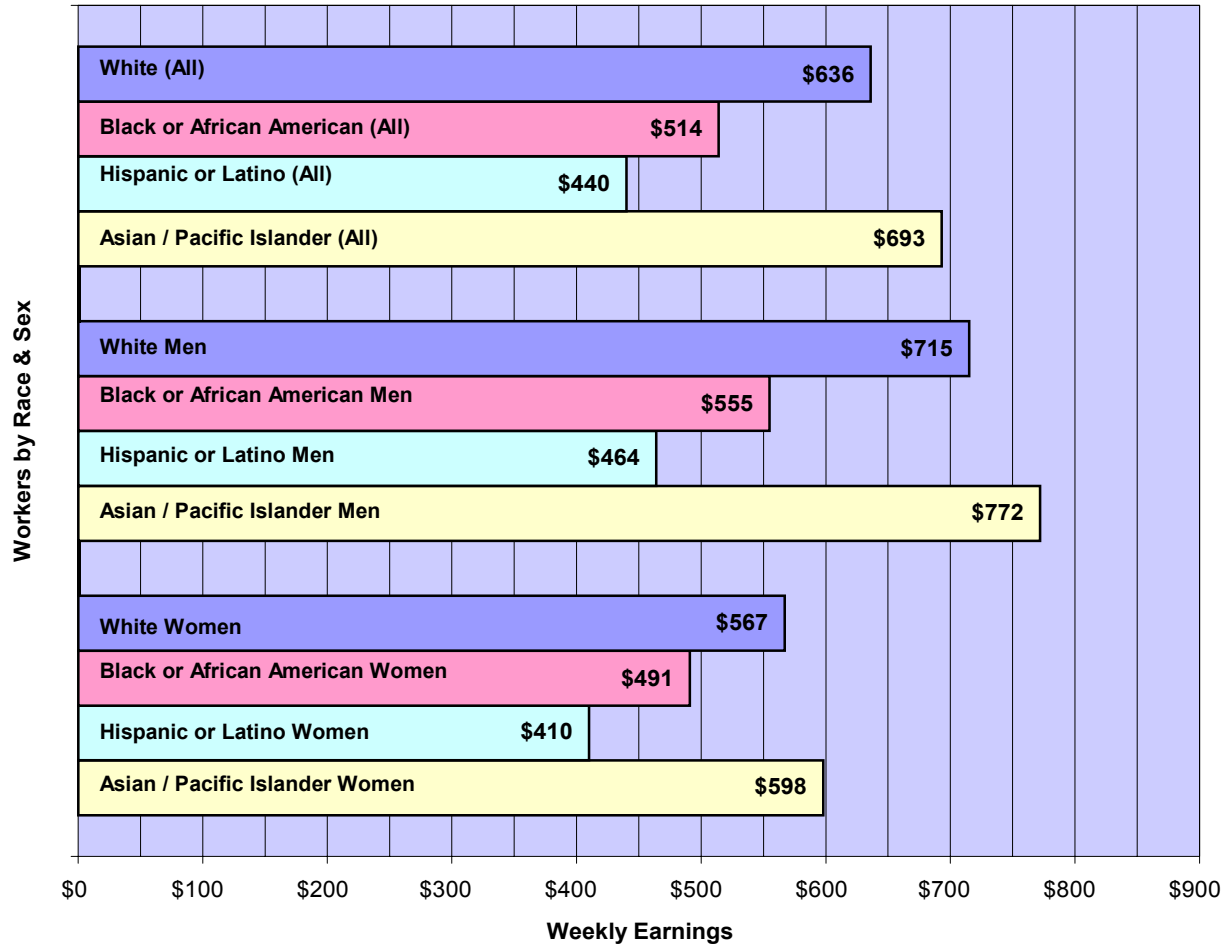
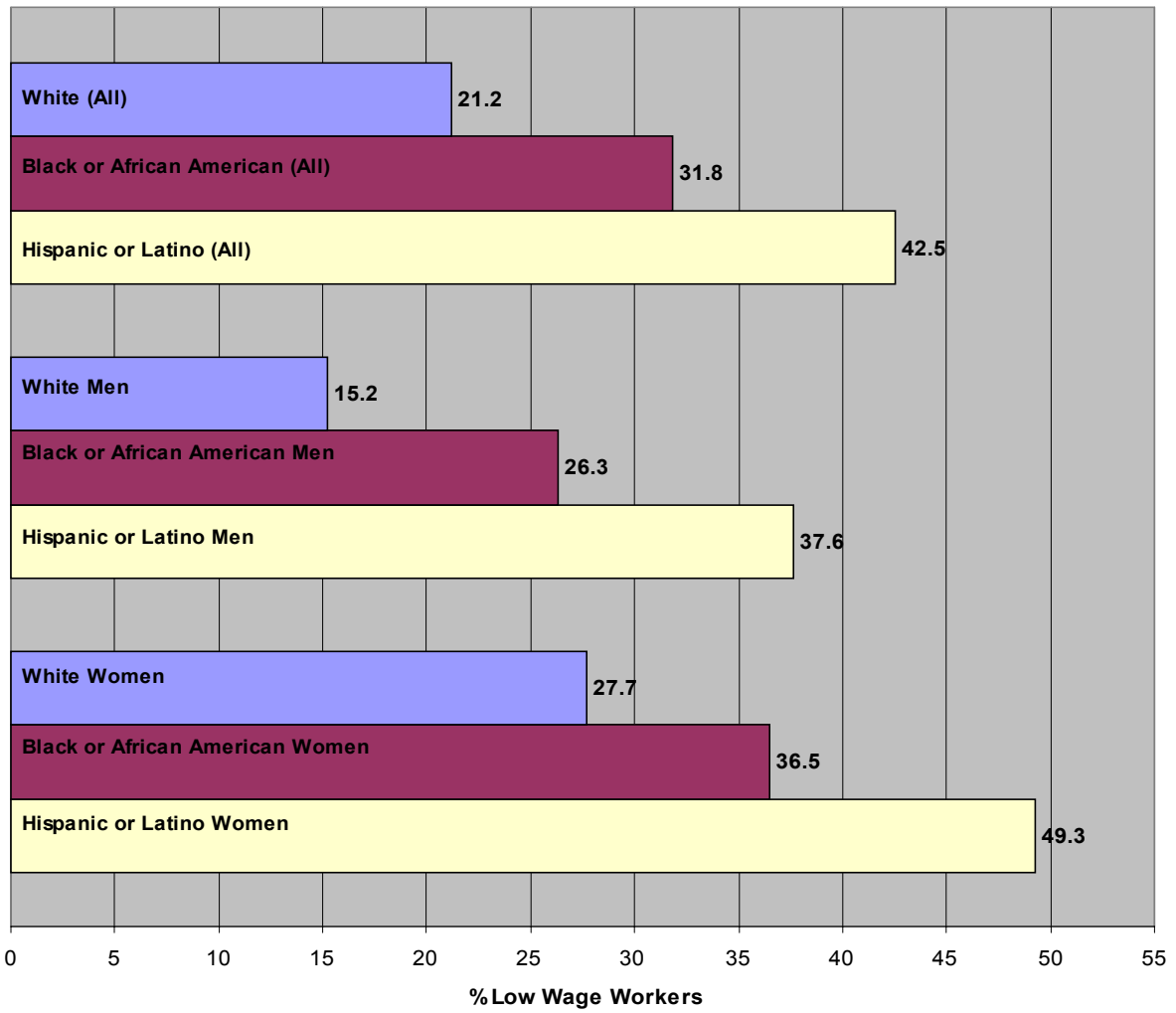


Chart D: Low Wage Workers by Sex, Race, & Ethnicity in 2000
Source: Economic Policy Institute, "The State of Working America 2002-2003"



Disclaimer

While text, citations and data for this report were, to the best of the authors' knowledge, current as **WOMEN AT WORK: LOOKING BEHIND THE NUMBERS – 40 YEARS AFTER THE CIVIL RIGHTS ACT OF 1964** was prepared, there may be subsequent developments, including recent legislative actions, which could alter the information provided herein. This report does not constitute legal advice; individuals and organizations considering legal action should consult with their own counsel before deciding on a course of action.