It is still a Man's Game - Discrimination of Women in Pay and Promotion

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ABSTRACT

There is ample evidence that there still is a pay gap amongst men and women and the situation is no different if academia. Many studies have examined various types of gender discrimination in academia and two areas in particular are problematic – salaries and representation of female faculty in upper ranks of academia. This paper examines the past discriminatory trends and the causes behind them as well as the legal prohibitions against gender discrimination. In order to see if gender discrimination still exists against female faculty members, an analysis of pay and rank data from 603 AACSB Colleges of Business were surveyed and analyzed. The statistical evidence demonstrates that there still is a pay gap for female and male faculty. A larger disparity was found in the representation of women in the rank of Professor.

Since female faculty members still are underrepresented and underpaid, one avenue of recourse is to bring a discrimination suit against the University. However, there are a number of problems in doing just that, so several policy recommendations are provided to help universities reduce the disparity in pay and representation.

Introduction.

There are many studies that demonstrate there are gender differences in academia, primarily in the areas of promotion and pay, but studying gender differences solely restricted to these two variables misses some of the subtle forms of discrimination that exists in academia. Academia is a very different environment from the business community. The process of determining pay increases and promotions are made behind closed doors and the decisions are frequently highly subjective. Universities maintain a tight hold on the confidentiality of the decision itself as well as all of the informational input leading to the decision. There is great room for subjectivity that opens the doors to bias and discriminatory decisions. This paper is attempting to examine the formal theories of what accounts for differences and anecdotal information about the more subtle forms of discrimination.

As more and more women enter the labor force, there should logically be a similar increase in the number of women working in academia. By 2003,close to 60% of all women aged 16 and older were in the labor force. The U.S. Department of Labor has projected that this figure will reach nearly 63% by the year 2015. One of the most significant changes that took place in the 20th century was the rise of women managers. In 1900, only 4.4% of managers were women. By 1999, more than 45% of all managers were women, a tenfold increase. In fact, over the last 20 years, women have increased their representation in nearly all of the professional occupations.

One of the professional occupations that experienced a shift in female participation is postsecondary education. In 1983, approximately one-third of those faculty members employed in colleges and universities were women. By 2002, that number had increased to 42.7%. Similarly, in the business disciplines, over the same time period, female participation has increased from

approximately 36% to 42%.[1] However, while participation has gone up, the representation of women in various levels of academia is not what would be expected if all things were equal. Women earn more than half of all graduate degrees, but hold only 24% of full professorships, 31% of tenured positions, and 40.9% of tenure track positions.[2]

But while the overall representation of women is increasing, women seem to be gravitating towards particular fields such as the social sciences rather than the Science, Technology, Engineering and Mathematical (STEM) disciplines. If this is so, it stands to reason that women in the social sciences would have pay levels and promotion rates that are closer to men, since their representation in these feels is great than those in the STEM disciplines. One particular area, Colleges of Business, tend to reflect trends that are ongoing in the marketplace. this paper is going to concentrate on two areas of gender discrimination: academic pay and rates of promotions. In particular, focus will be on these issues and on Colleges of Business to see if the academic community demonstrates more equality than the business community. There are gender issues that seem to be common between the academic community and the business community. For example, gender discrimination claims are particularly common in tenure disputes.[3] The two primary areas of gender discrimination in academia seem to be over salaries, promotions, and the award of tenure.[4]

Pay Issues in Academia

According to one estimate, women as assistant, associate, and full professors on average earn only 83% of what their male counterparts earn.[5] There are many tales about inequity in the workplace, but the number of studies, which focus on pay differentials, is on the increase. The disturbing thing is that one would think that an academic environment would not present the kind of bias and differential treatment that women in the private sector experience, but it does seem that the problem may actually be worse than what goes on in the business community. Many women, especially those starting out in their academic career, are going to be very hesitant to speak out regarding any pay differentials, since young academics are interested in receiving

1 Patricia A. Lanier, John R. Tanner, and Brandi N. Guidry. Comparison of Gender and Gender-Related Issues in the Business Disciplines, Public Personnel Management Volume 38 No. 3 Fall 2009.

2 Martha S. West & John W. Curtis, Am. Ass'n of Univ. Professors, AAUP, Faculty Gender Equity Indicators 2006 at 5 (2006), *available at* http://www.aaup.org/ NR/rdonlyres/63396944-44BE-4ABA-9815-5792D93856F1/0/AAUPGenderEquity Indicators2006.pdf.

3 Mary Hora, *The Courts and Academia: Tenure Discrimination Claims Against Colleges and Universities*, 30 J.L. & EDUC. 349, 351 (2001) (specifically relating to tenure claims).

4 Jennifer Freyd, *References on Chilly Climate for Women Faculty in Academe*, http://dynamic.uoregon.edu/~jjf/chillyclimate.html (last visited Jan. 21, 2007). Other studies have recognized gender bias reflected in student evaluations, which are often important criteria in hiring and tenure decisions.

5 Martha S. West & John W. Curtis, Am. Ass'n Of Univ. Professors, AAUP Faculty Gender Equity Indicators 2006 at 15 (2006), *available at* http://www.aaup.org/ NR/rdonlyres/63396944-44BE-4ABA-9815-5792D93856F1/0/AAUPGenderEquity Indicators2006.pdf.

tenure. Any type of inquiry about the rate of pay that might be made could result in a no vote on decisions of tenure and/or promotion.

Legal Issues in Pay

Several significant laws exist with respect to preventing discrimination in pay and/or promotions.. Three laws in particular have been used in gender discrimination litigation in academia.. The first is the Equal Pay Act of 1967.[6] That act states that men and women are to paid equally if they are performing substantially equal work . The Equal Pay Act prohibits employers from paying lower wages to one gender for "equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions," with exceptions for wage differentials based on factors other than sex.[7]

The difficulty with the EPA is finding a suitable comparison person. In order to be successful in an EPA claim, an academic must be able to find a male academic who holds a substantially similar job, has the similar time at the university, suitable comparison other since the university can use the affirmative defenses of merit, productivity, seniority, etc. Many women have less years at the university than most of their male comparisons and if the gap is too large, she will not be able to sustain a claim for the mere fact there is no comparison person who has substantially similar time, tenure, rank and duties that the plaintiff has. If fact, if the employer can show any reason for the differential in pay, aside from gender, the employer is likely to be successful in defending the differences in pay. Equal Pay claims are very difficult to win, and given the many variations of job duties in academia, chances of successful litigation is slim. If an Equal Pay claim is filed, it is almost certain that a Title VII case will be filed with it.

Title VII of the Civil Rights Act of 1964[8] as amended. Employers with 15 or more employees are forbidden to discriminate against individuals for their race, color, religion, natural origin and gender. Two types of discrimination – disparate treatment and disparate impact – are prohibited. Disparate treatment is intentionally treating someone differently because of his or her protected class status. So, for example, denying a female scholar a raise because she is female represents intentional discrimination. Universities are usually not as blatant in their discriminatory practices[9]

The second type of discrimination is known as disparate impact which is defined as a policy or practice, that while neutral on its face, has the effect of discriminating against a protected class. For example, if one of the requirements for promotion is that of publications (which appears to be neutral on its face) might have the effect of discriminating against men and women should gender-based research and publications receive less weight than other forms of publications. Both disparate impact and disparate treatment discrimination are violations of TVII

The last discrimination law is Title IX, which prohibits discrimination in educational programs and activities receiving federal funding.[10] This law would touch upon issues that are not directly

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6 29 U.S.C. § 206(d)(1) (2000).

7 Id.

8 42 U.S.C. § 2000e-2(a)(1) (2000).

9 It should be noted that while universities may try to hide their biases, there are other types of discriminatory acts where the discrimination is much more blatant such as pregnancy discrimination and sexual harassment.

10 20 U.S.C. §§ 1681-1688 (2000).

related to pay and promotion discrimination, but would be a tangential source of discrimination. For example, if academic programs headed by female faculty were not as well funded as those headed by men. This would have an effect on the performance rating of the female faculty member that in turn could prevent her from getting a pay raise or promotion.

Even though there are legal mechanisms in place to prevent discrimination for female academics, there is persistent evidence that the salaries for men and women in academia are not equal. Several organizations, such as the Association for Advance Collegiate Schools of Business (AACSB) and the American Association of University Professors (AAUP) have regularly conducted salary surveys and the results have been disappointing to say the least. Despite all of the legal safeguards that are in place, gender differences are evident in the salaries of academic women v. men.

Perhaps part of the reason is the impediments that are presented when female faculty members try to pursue a gender discrimination case. When academic pay discrimination cases reach the courts, plaintiffs can have a difficult time proving an Equal Pay claim. Academic jobs typically have the same types of performance areas – research, teaching, service, but how those duties are distributed and achieved by the plaintiff is what can defeat the claim. However, few plaintiffs are successful because they often have no direct evidence of discrimination, and the current legal framework makes it nearly impossible to prove a gender discrimination claim with indirect evidence.[11]

Fallout from gender discrimination in academia. In 2004, the American Association of Women in Academia produced a comprehensive study about discrimination of women in academia[12]. In addition to finding evidence of pay discrimination and promotional issues, the report provided an insightful study about academic women who decided to pursue legal recourse against their discrimination and the effects that arose as a result of litigation. Women are facing a variety of discrimination issues aside from discrimination in pay. One of those issues in a disparity in the number of women who receive tenure and who are in the upper ranks of academia.

Promotion and Tenure. One of the other areas where gender disparity is present is in the number of women at the upper level ranks of academia. Several surveys have studied the rate or

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11 Chase, Michelle, Gender Discrimination, Higher Education, And The Seventh Circuit: Balancing Academic Freedom With Protections Under Title Vii, Case Note: *Farrell Vs. Butler University,* Wisconsin Women's Law Journal, Vol. 22:153, 176. *See also, Farrell v. Butler University,* 421 F.3d 609 (7th Cir. 2005),
Hora, Mary. *The Courts and Academia: Tenure Discrimination Claims Against Colleges and Universities,* 30 J.L. & EDUC. 349, 351 (2001) (specifically relating to tenure claims), at 352-55; William A. Kaplin & Barbara A. Lee, The Law Of Higher Education 9-10 at 514-15(4th ed. 2006); Susan Sturm, *The Architecture of Inclusion: Advancing Workplace Equity In Higher Education,* 29 HARV. J.L. & GENDER 247, 264 (2006).

12 AAUW Educational Foundation and the AAUW Legal Advocacy Fund. Tenure Denied: Cases of Sex Discrimination in Academia. Susan K. Dyer, Editor. (Washington DC: AAUW Educational Foundation and the AAUW Legal Advocacy Fund) 2004.

promotion for female faculty as compared to male faculty and the results are disheartening. Women seem to significantly underrepresented in the rank of Professor.

Research has determined that women are not achieving higher ranks in academia in the past. The question is whether the findings are similar in today's market. To answer that question, salary surveys were used to determine differences in the pay of male academics and female academics in one institution – Colleges of Business.

Methodology

Subjects. The AACSB graciously gave permission to the author to use data from their Annual Salary Surveys. The data was taken from the most recent (2013-14) salary survey. The AACSB is the organization that provides accreditation to Business Schools provided that they have achieved standards of excellence. Salary data is gathered every year from these colleges that vary in size and location. A total of 603 AACSB accredited Business schools participated in this study. Frequency data was collected using the various variables of mean salary by gender and the ratio of women to men in the various ranks of Instructor, Assistant Professor, Associate Professor and Professor. The results are presented in Table 1.

Table 1
AACSB Salary Results for 2013-2014[13]

	Females	N	Males	N	% of men's salary	% of females to males
Professors	141.7	1524	154	6088	0.92012987	0.250328515
Associates	121.4	2264	125.3	4682	0.968874701	0.483554037
Assistants	116	2413	121.4	3871	0.955518946	0.623353139
Instructors	70.1	1770	77.4	2663	0.905684755	0.664663913

Results. The data provides for some interesting results. As expected, female faculty members were paid less across positions than their male counterparts. Female professors were paid 92% of that of their male counterparts that represented the highest salary gap other than female instructors that was 91% of their male counterparts. Gaps still remain amongst the Assistant and Associate professor ranks, but they are closer to matching their male counterparts. Female associates make 97% of male associates and female assistants make. At least in the area of salary, the overall results are coming closer to their male counterparts and certainly have progressed from the earlier studies on academic salaries.

Perhaps the most surprising results, but not unexpected, were the lower representation ratios between men and women in the various academic rankings. Many studies point to the fact that it is extremely difficult for women to crack the upper levels in academia and this is certainly borne out by the data. Female Professors as compared to male professors represent only 25%. This is a startling gap in the representation of women as compared to men. Female Associates only represent 48% compared to men; female Assistants make up 66% as compared to male Assistants. Female Instructors were represented only 66% of male instructors.

13 Data was taken from the DataDirect database of the AACSB with permission. The data was analyzed in March 2014.

So, while female academic salaries seem to becoming closer in matching male academics, the actual representation of women in the various rankings seems to be taking a giant step backward. The extremely low presence of women in the Professor ranks bears out the previous studies who find that women face the greatest challenge in just being promoted to Professor, let alone trying to claim a salary comparable to that of their male counterparts.

It must be cautioned that these results are only applicable to AACSB-accredited Colleges of Businesses, but the findings seem to be following trends that have been occurring at all different programs and colleges. Further study needs to be conducted for other programs to see if the trends found in the business schools mirror the types of trends that are prevalent in other disciplines, such as the social sciences. Nonetheless, it is disturbing to find that there still is a pay and promotional gap for female academics after years of equal rights legislation.

Conclusions and Policy Recommendations. It is clear that gender differences are still prevalent at least in the Business Schools. The academic community will find itself losing promising and talented female academics especially in the Professor ranks. Female scholars find there are basically three ways to equalize their positions: 1) file a lawsuit; 2) give up on achieving either equality in salary or rank or 3) give up and leave academia. Filing lawsuits is financially draining for plaintiffs and emotionally traumatizing.

Formal reports such as the AAUW, the AAUP and the Chronicle of Higher Education all point to an immediate solution of bring a gender discrimination case against the employing University. However, information in formal and anecdotal sources claim that filing a lawsuit is not only expensive in cost, the plaintiff endures much even if the case is successful. At the very least, the plaintiff is named as a "troublemaker" and will be shunned and find it difficult, it not impossible, to find work away from the employer. Former colleagues who once were friends with the plaintiff will avoid her because the "guilt by association" may impede her career path at the University. The plaintiff might face subtle forms of retaliation where she is no longer assigned to important service assignments or is given a heavy teaching load with class times that are inconvenient and burdensome. Finally, because the plaintiff needs to spend so much time documenting events and collecting evidence, she can suffer burnout. Physical symptoms of migraines, insomnia and depression can result from the stress of the lawsuit. Even if the lawsuit is successful, the resulting verdict and award can be overturned in the appeals process.

Female academics view or hear about the painful process of litigation and decide that they do not wish to pursue this particular course of action. They do not wish to go through such a difficult process and so they may elect to either stay and accept the disparity or leave the organization and try to find other employment at a more equality-conscious university. Whatever the decision, it is a painful one to make.

Policy implications for Universities. It is clear that Universities have a problem with providing a fair environment for female scholars. Failure to attend to the problem will result in the loss of solid female talent. In this ever-increasing competitive world, even academic institutions must constantly battle for funding and that funding will go to the University that has the most promise in fulfilling its role at educating students. The University that loses talent will also lose out on funding.

Further loss of resources is realized when a University must defend itself against a lawsuit. Lawsuits cost both parties a great deal of money with attorneys' fees, lost work time. Discrimination suits can continue for years until final resolution and it is a burden that neither the

employer universities nor the plaintiffs wish to shoulder. Money is being spent on resources that should be going to the classroom. Discrimination suits have been on the rise and there is no reason to believe that they will go away without some effort by the academic community to alleviate the problem.

The solution lies in the processes that give rise to the discrimination in the first place – the decision making process in determining raises and tenure and promotions. These decisions are made behind closed doors with a great amount of subjectivity. It is surprising that the courts have given such leeway to academia – much more so than has been granted to business.[14] Most Universities claim confidentiality in deciding issues of promotion, tenure and pay and to some extent, the courts have recognized this need until certain cases arose stating that universities do not have any more right to keep needed records as confidential as an other employer.[15]

If universities are truly interested in providing equal opportunity for female academics, the AAUW have some suggestions to clarify decisions regarding tenure, but these same clarifications can and should be used for promotion and salary decisions.

- "Design school policies that comply with antidiscrimination laws, and ensure that faculty and administrators understand and comply with those policies.
- Require annual written evaluations with explicit performance measures to address the candidate's progress in research, service, and teaching.
- Recognize the power tenured professors have over junior faculty and students and actively watch for and monitor abuses.
- Take conflicts of interest in hiring or promotion seriously.
- Adopt a policy allowing for "time off the tenure clock" for childbirth and parenting.
- Treat rejected tenure candidates respectfully.
- Offer services to support faculty as they seek new positions
- Provide written tenure policies and procedures to all faculty and prospective employees.[16]

The greatest impediment to equality is the secretive, subjective, decision making process that occurs in academia. Universities should be required to use behaviorally based criteria that are written so clearly that there can be no room for subjectivity. The performance criteria should be communicated to both faculty and administrators and faculty should be given copies of their evaluations and decisions that lay out precisely why the candidate has been given the salary raise or denied the promotion. Only then can the female faculty member have a solid record from which she can either decide to file a lawsuit or to rethink her position in the University.

14 See *Zahorik v. Cornell University*, 729 F.2d 85 (2d Cir. 1984).

15 *University of Pennsylvania v. EEOC*, 493 U.S. 182 (1990),

16 AAUW, Tenure Denied: Cases of Discrimination in Academia, pp. 79-80.

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