Kamala Harris Misguided Plan to Close the Gender-Pay Gap

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California senator Kamala Harris has unveiled a new plan to close the gender-pay gap.

Under Harris's proposal, companies with 100 or more employees would have to report pay differentials between men and women, controlling for "differences in job titles, experience, and performance." If they could not show that men and women were paid the same after factoring these controls in, they would be fined 1 percent of profits for every 1 percent gap in pay.

This "solution," at one level, is curious. The statistic on which widely reported claims of a "gender pay gap" are based - that full-time female workers are paid only about 80 percent of what full-time male workers make — doesn't account for job types, experience, or performance. In that sense, Harris's legislation recognizes that such metrics are meaningless or, at least, too crude. But that means there's also no reason to think that beefing up "equal pay for equal work" legislation by putting the presumption of compliance onto employers will close the headline rate everyone discusses.

In short, Harris's plan does not really target the "gender pay gap" at all. It attempts to further stamp out gender pay discrimination by "policing at the elbow." That aim will have fewer opponents. Yet the truth is, more factors than she accounts for determine wages. Her legislation would create significant compliance costs and avoidance strategies, lead to potential surpluses and shortages of workers, and could even hurt women who currently enjoy flexible working arrangements.

To see why, consider the *Game of Thrones* cast. Playing each character really constitutes a different "job." The company producing the show could easily argue it has no pay gap at all then, in a literal sense, even before collecting any information. Yet suppose there were two extras running from Drogon in King's Landing in that penultimate episode - one male and one female - with the same role, number of lines, screen time, and measurable prior experience. There still might be good reasons why they could command different pay rates.

The man, for example, may be of a certain height or look that is in high supply among the pool of prospective extras. The woman might perfectly reflect the needs of the show but have a lucrative offer to appear in another show, requiring higher payment to attract her. Quite simply, beyond "job titles, experience, and performance," supply and demand and other factors determine pay in actual markets. Not accounting for them risks finding discrimination where it doesn't actually exist.

Indeed, it doesn't make sense to think that work is of "equal value" because you've controlled for observed performance factors. It's a mistake that harkens back to Karl Marx's labor theory of value. Skills, experience, and performance do help determine wages, which is why controlling

for them lowers statistical “gender pay gaps.” But supply and demand matter too. If there are hundreds of applications for one post and none for another, then paying the same amount for the two jobs makes little sense.

Take workers who stock shelves in supermarkets and their warehouses. Shelf-stackers in both locations ostensibly do “the same job.” If a supermarket chain gave them the same job title, and all other experience and performance were equal, this legislation would mandate that workers in both locations be paid the same. Yet it is plausible that working in a warehouse may simply be less pleasant than working in a supermarket, if the warehouse is colder or in a more isolated area or those who work there have less agreeable hours. If men have a greater willingness to accept these unpleasant conditions in return for the “compensating differential” of higher pay, this again would show up as a pay gap, with the company being liable for fines under Harris’s legislation. Yet paying both sets of workers the same could create severe shortages of warehouse workers, or surpluses of supermarket employees.

To avoid such fines or outcomes, businesses would likely revise job titles to ensure that people were labeled uniquely. That could lead to hierarchical disputes within companies and presumably to legal challenges, but it would be a solution. The alternative is to face the prospect of running complex regressions and aggregation calculations to determine whether, on net, men and women are equally paid. That would require the intrusive collection of data on employees’ work history or a more rigorous evaluation of employee performance, either of which itself might have undesirable consequences for workers.

Performance is particularly subjective. Earlier this year the members of the U.S. women’s soccer team filed a gender-discrimination lawsuit against the United States Soccer Federation, claiming they were paid less than the male team despite more success. But “performance” in this industry is relative to other competitors, and the male World Cups are undoubtedly more lucrative, because they attract vastly more spectators.

These missed factors and calculation problems notwithstanding, Harris’s plan could also have unintended consequences for working women. In the U.K., large organizations (greater than 250 employees) are already required to report median and mean hourly gender pay gaps. The energy- and gas-supply company Npower, for example, reported a median gender pay gap of 18 percent for 2018. Yet it explained that this was owing in part to a range of benefits and flexibility measures that the company offers to employees in return for salary sacrifice, including child-care vouchers and flexible working arrangements designed specifically for working mothers. Under Harris’s proposal, this would make the company liable for fines, even though the compensation arrangements are something women actually chose.

Harris’s plan, then, is well-intentioned. But it simply ignores that the labor market is a market and that as such it is bound up with subjective valuations, free choices, and the vicissitudes of supply and demand. With such an array of factors determining wages, it’s incredibly difficult to use top-down statistical approaches to root out genuine gender discrimination. Putting the onus on employers in this way risks a combination of “false positives” and firms seeking ways to avoid fines and could well hurt working women.

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