

Facts About

Women and the Law



*"Facts are stubborn things;
and whatever may be
our wishes, our inclinations,
or the dictates of our passions,
they cannot alter the state of
facts and evidence."*

— John Adams, December 1770



American Bar Association
Division for Media Relations and Public Affairs

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Women in the Justice System



Question 1 Are women a significant part of the legal profession?

Answer Women are now a permanent and integral part of the legal profession, comprising 24 percent of the nation's lawyers. The percentage of women lawyers has nearly doubled since 1985, when it was 13 percent, and is eight times the percentage of women who practiced law in 1971 (three percent).

Women's place in the profession continues to grow. Forty-four percent of all law students are women, and it is expected that women will make up 40 percent of the legal profession by 2010. At the same time, current projections suggest that the legal profession will never be 50 percent women, even though women are more than 50 percent of the population.

Sources: Curran, Barbara A., *Women in the Law: A Look at the Numbers* (American Bar Association Commission on Women in the Profession, 1995); Curran, Barbara A. and Clara N. Carson, *The Lawyer Statistical Report: The U.S. Legal Profession in the 1990s* (American Bar Foundation, 1994)



Question 2 Are women finding their place as leaders in the profession?

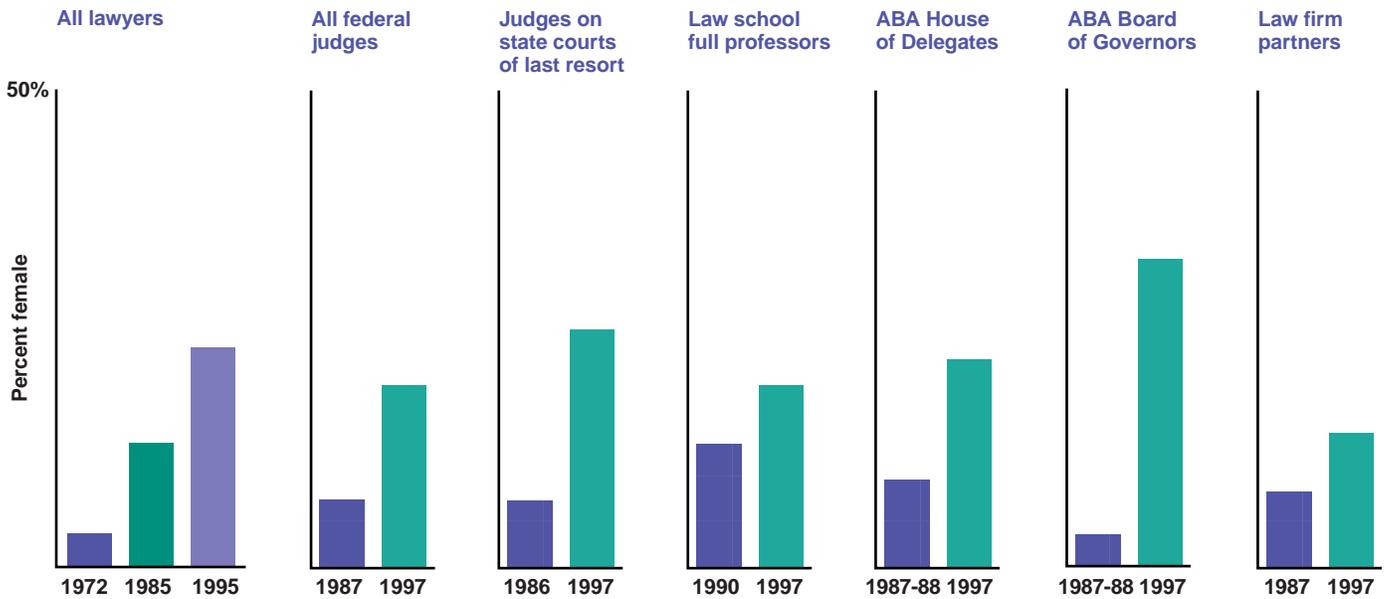
Answer Women are establishing themselves as leaders in the profession. As of 1997, women comprised 14 percent of law firm partners, 19 percent of full professors at law schools, 8 percent of law school deans, 19 percent of federal judges, 20 percent of state civil judges, 22 percent of American Bar Association House of Delegates members, and 32 percent of the members of the ABA Board of Governors.

Women lawyers' representation in leadership positions is outpacing their overall increasing numbers. Over the last 10 years, during which the percentage of women lawyers increased by about 77 percent (from 13 percent in 1985 to 23 percent in 1995), the percentage of women in leadership positions increased by 100 percent to almost 100 percent.

For example, there is a 170 percent higher percentage of women federal judges today than in 1987 (19 percent v. 7 percent), 186 percent higher percentage of women judges in state courts of last resort (20 percent in 1997 v. 7 percent in 1986), 144 percent higher percentage of women in the ABA House of Delegates (22 percent in 1997–98, from 9 percent in 1987–88), and the percentage of women on the ABA Board of Governors went from 3 percent in 1987 to 32 percent in 1997–98. Growing at a slower rate, one closer to the overall rate of increase of women in the profession, is the 75 percent growth in the percentage of women partners at law firms (14 percent in 1997, up from eight percent in 1987), and the 46 percent growth in the percentage of women law professors (19 percent in 1997, up from 13 percent in 1990).

Sources: American Bar Association Commission on Women in the Profession, Report to the ABA House of Delegates, on the Status of Women in the Legal Profession, August 10, 1988; American Bar Association Commission on Women in the Profession, *Women and the ABA: A History of Women's Involvement in the ABA, 1965-1989*; American Bar Association Commission on Women in the Profession, *1997 Goal IX Report Card*; Federal Judicial Center; National Center for State Courts

Graph 1 / **Women as Leaders in the Legal Profession**



Sources: American Bar Association Commission on Women in the Profession, Report to the ABA House of Delegates, on the Status of Women in the Legal Profession, August 10, 1988; American Bar Association Commission on Women in the Profession, *Women and the ABA: A*

History of Women's Involvement in the ABA, 1965-1989; American Bar Association Commission on Women in the Profession, *1997 Goal IX Report Card*; Federal Judicial Center; National Center for State Courts

Question 3 How are women doing in law school?

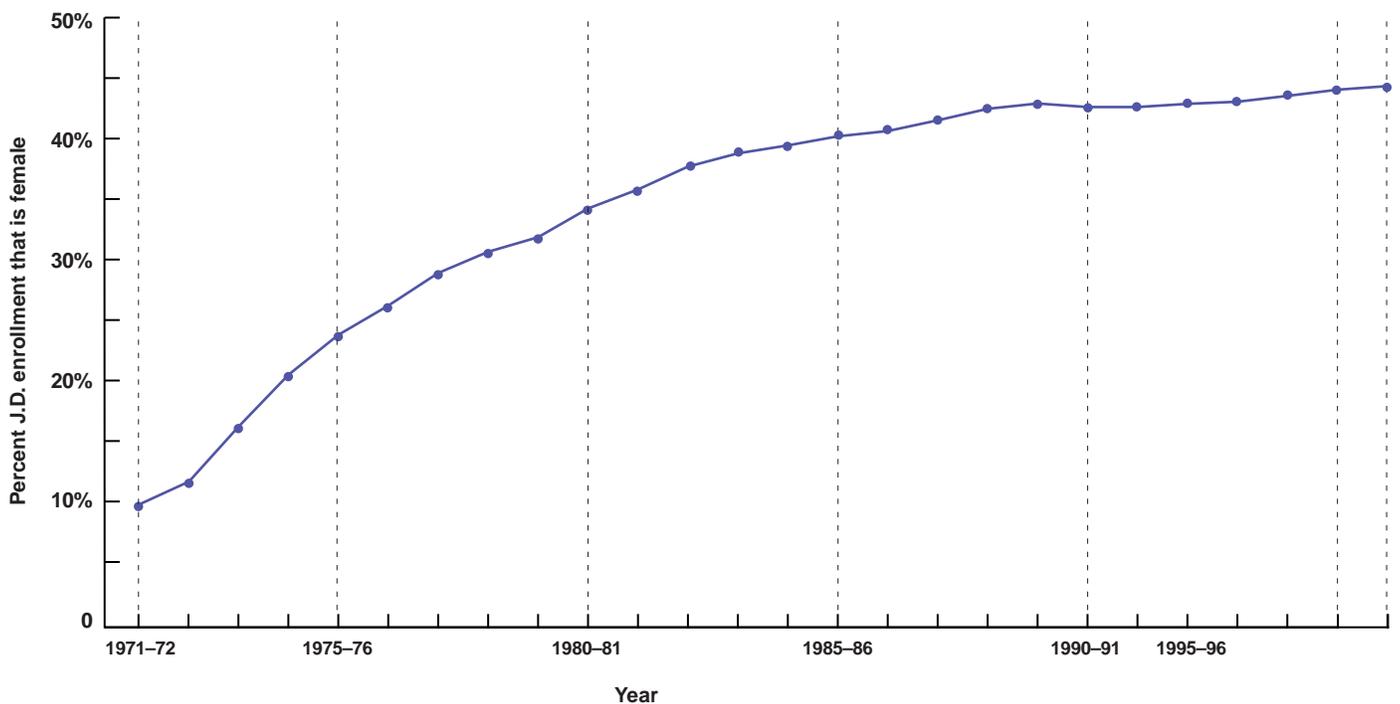
Answer Since the early 1970s, the percentage of law students who are women has more than quadrupled, from 9.4 percent in 1972/73 to 44 percent in 1996/97.

Source: American Bar Association Section of Legal Education and Admissions to the Bar, *Approved Law Schools, 1998 Edition*

Table 1 / **Growth of Women in Law School**

Academic Year	Total J.D. Enrollment	Total J.D. Women Enrollment	Percent Female
1971-72	91,225	8,567	9.4%
1972-73	98,042	11,878	12.1%
1973-74	101,675	16,303	16%
1974-75	105,708	21,283	20.1%
1975-76	111,047	26,020	23.4%
1976-77	112,401	29,343	26.1%
1977-78	113,080	31,650	28%
1978-79	116,150	35,775	30.8%
1979-80	117,297	37,534	32%
1980-81	119,501	40,834	34.2%
1981-82	120,879	43,245	35.8%
1982-83	121,791	45,539	37.4%
1983-84	121,201	46,361	38.3%
1984-85	119,847	46,897	39.1%
1985-86	118,700	47,486	40%
1986-87	117,813	47,920	40.7%
1987-88	117,997	48,920	41.5%
1988-89	120,694	50,932	42.2%
1989-90	124,471	53,113	42.7%
1990-91	127,261	54,097	42.5%
1991-92	129,580	55,110	42.5%
1992-93	128,212	54,644	42.6%
1993-94	127,802	55,134	43.1%
1994-95	128,989	55,808	43.3%
1995-96	129,318	56,923	44%
1996-97	128,623	57,123	44.4%

Graph 2 / Growth of Women in Law School



Source: American Bar Association Section of Legal Education and Admissions to the Bar, *Approved Law Schools, 1998 Edition*

Question 4

Is there gender bias in law schools?

Answer In response to reports by women law students and faculty about gender discrimination in law schools, the ABA Commission on Women in the Profession conducted a series of hearings in 1994 and 1995 to explore the subject. The results were disquieting. Testimony showed that in a large Midwestern law school, a faculty member routinely referred to women students as “little girl” or “sweetie,” and that students at another school called women faculty inadequate or bitchy, and tested them with frequent interruptions. In all, the Commission heard from deans, faculty and students from 58 law schools, whose testimony showed repetitive concerns about bias in the form of gender stereotyping, sexual harassment, hostile and disrespectful behavior toward female students, a relative silence of women in the class-

room, a lack of female role models and mentors, a low percentage of female tenured faculty, a disproportionately high number of women faculty in non-tenure track positions, and pay disparities between male and female professors with the same credentials.

Yet there were also signs of progress. Many students perceived law school as gender neutral. Witnesses reported that most professors treated women and minority students with respect, and many students acknowledged that some law school environments were changing for the better. Also, witnesses reported that women students who were reluctant to speak in the classroom were pleased with clinical programs that gave opportunities for learning and success, and students praised some schools for making concerted efforts to hire more women faculty and address gender-related issues in a proactive manner.

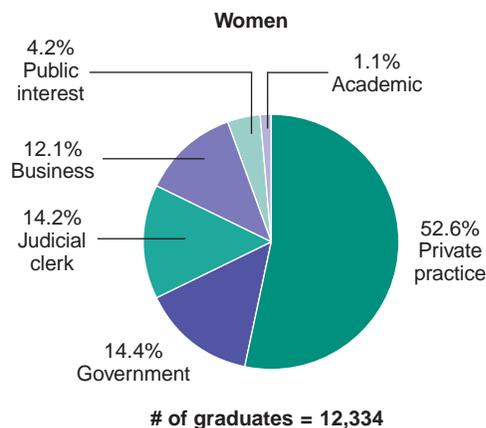
Source: American Bar Association, Commission on Women in the Profession, *Elusive Equality: The Experiences of Women in Legal Education, 1996*



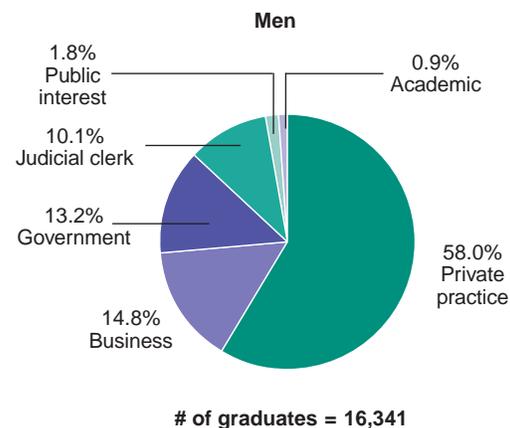
Question 5 Where do women lawyers work?

Answer Most women lawyers work in private practice, as do most men. In 1991, 70 percent of women and 74 percent of men were private practitioners. Another 12 percent of women worked for the government, 9 percent worked in private industry or associations, and smaller percentages worked in legal aid or as public defenders, judges or educators. The greatest advances for women have come in the more prestigious (and high-paying) sectors of the work force, such as private practice. In 1980, only 56 percent of women had been in a private practice setting, compared to 70 percent of men.

Graph 3 / **Women's and Men's First Employer After Law School, Class of 1997**



Note: Figures based on full-time jobs only. To enhance clarity, the unknown category is not shown on the chart.



Source: National Association for Law Placement, Selected Class of 1997 ERSS Findings, 1998

Trends among newly admitted lawyers are not dramatically different. Most women in the class of 1997 who have full-time jobs, but fewer than men, entered private practice. More women than men took judicial clerkships (14.2 percent v. 10.1 percent), entered government (14.4 percent v. 13.2 percent) and went into public interest work (4.2 percent v. 1.6 percent). More men than women went into business (14.8 percent v. 12.1 percent).

Sources: Curran, Barbara A., *Women in the Law: A Look at the Numbers* (American Bar Association Commission on Women in the Profession, 1995); Curran, Barbara A. and Clara N. Carson, *The Lawyer Statistical Report: The U.S. Legal Profession in the 1990s* (American Bar Foundation, 1994); National Association for Law Placement, *Selected Class of 1997 Employment Report and Salary Survey Findings*, 1998



Question 6 Where do women in private practice work?

Answer In 1991, slightly under one-half (48 percent) of women in private practice were sole practitioners (compared to 44 percent of men), a setting that typically pays the lawyer less money than working in a law firm, although it may also bring more autonomy.

In 1991, women practiced at 40 percent of the law firms in the country (16,648 out of 42,513), more than two and one-half times the number in 1980 (when women practiced at 6,379 firms).

About 40 percent of associates and staff or senior attorneys at law firms are women, and about one of seven law firm partners is a woman. Women's representation at partnership levels varies greatly depending on where the law firm is located. For example, 19 percent of partners are women in Austin, 22 percent in Denver, and 20 percent in San Diego, while only 11 percent of partners are women in Cleveland, 12 percent in Hartford, and 12 percent in New York.

Source: Curran, Barbara A., *Women in the Law: A Look at the Numbers* (American Bar Association Commission on Women in the Profession, 1995)



Question 7 Do women lawyers earn the pay that men do?

Answer Overall, women lawyers earn less than men. This is partly because women work in less prestigious jobs, and partly because they are sometimes paid less for comparable work.

A recent survey of the Massachusetts Bar Association showed that in 1997 half of the men surveyed but only one-fifth of the women earned more than \$75,999; 35 percent of men and 58 percent of women earned less than \$50,000, and nearly a quarter of female respondents earned less than \$25,000. The survey also showed that on average, the women lawyers billed more hours per week than the men did.

Source: Massachusetts Lawyer Weekly, May 11, 1998, Message of the President of the Women's Bar Association of Massachusetts



Question 8 Do lawyers' workplaces have family friendly policies?

Answer Balancing work and family is a major concern of many women lawyers. Male lawyers care as well, but in reality women bear the greater burden of balancing career and family. In response to family concerns, many law firms have adopted family friendly policies such as those that provide on-site child care, or dependent-care assistance, or, more commonly, alternative work schedules. According to a 1997 survey by the National Association for Law Placement, about 92 percent of law offices allow part-time schedules, and more than half have a parental leave policy, prompted in part by enactment of the Family and Medical Leave Act of 1993.

While the policies exist on paper, though, few lawyers — women or men — are actually using them. According to the same NALP study, only 2.7 percent of lawyers say they work on a part-time basis. The figure seems to hold

true whether the work setting is a law firm, the government or a public interest job.

Lawyers are much less likely to work part-time than people in the workforce as a whole, or in more narrowly defined segments of the workforce. About 11 percent of all workers age 25 or older who worked in non-agricultural industries during 1997 usually worked part-time, and 13 percent of workers in professional specialties usually worked part-time.

It is hard to tell what discourages lawyers from taking advantage of part-time policies, whether it is a concern that the part-time lawyer will not be seen as being seriously committed to the law, a concern that a part-time job will grow into near-full-time work with part-time pay, or the belief — realistic or not — that at least certain kinds of legal work can be done only on a full-time basis.

Source: American Bar Association Commission on Women in the Profession, *Unfinished Business: Overcoming the Sisyphus Factor*, 1995; National Association for Law Placement, News Release, analyzing data published in the 1997-1998 National Directory of Legal Employers



Question 9 Is there bias against women litigants and lawyers in the courtroom?

Answer Because respected academic studies showed that women were being treated differently from men in court proceedings, a reform effort known as the gender bias task force movement was initiated in 1980. In this nationwide movement, federal and state court systems asked litigants, lawyers, judges and court staff the questions, “Do we discriminate? How? Against whom? In general? In pervasive and diffuse ways?”

The effort officially began in 1982 with the establishment of the New Jersey Supreme Court Task Force on Women in the Courts, whose mandate was to examine the nature and extent of gender bias within that court system. In the ensuing 15 years, similar task force activities were undertaken in more than 40 states. Although some people questioned the need for these task forces, each of the more than 35 final state reports documented that bias on the basis of gender permeated the judicial system. The reports included well-supported examples of discrimination against women litigants, lawyers and court personnel, both in terms of the way the women were treated and in substantive decision-making concerning them.

More than 20 reports showed that women witnesses face special hurdles. Several reports tell that women seeking redress for domestic violence are often either blamed, accused of provoking their attacks, treated as if their experiences were trivial, or disbelieved. Questions of credibility also arise in the context of sexual assault and rights sought by women litigants under employment and federal benefits law.

The conclusions of the New York Task Force on Women in the Courts show the recurring theme. The report says, “gender bias against women is a pervasive problem with grave consequences... Cultural stereotypes of women’s role in marriage and in society daily distort courts’ application of substantive law. Women uniquely, disproportionately, and with unacceptable frequency must endure a climate of condescension, indifference and hostility.”

The reports were ground-breaking, for they substantiated systemic gender bias in the courts. One shortcoming was that they focused on women in a generic way, and did not capture the distinct experiences of women of different races, ethnicities, classes, ages and sexual orientation. Also, although many reports included definitive recommendations for addressing the problems identified, only a few states have vigorously pursued remedies. Therefore, in 1997, five national organizations — the National Association of Women Judges, the National Judicial College, the National Center for State Courts, the ABA Commission on Women in the Profession, and the National Judicial Education Program — began a project to revitalize the national gender bias task force movement. The project will survey past and present task forces and implementation efforts, develop a directory of resources for implementing task force recommendations, determine which implementation strategies are the most successful, and help states implement them.

Sources: Resnik, Judith, *Gender in the Courts: The Task Force Reports*, The Woman Advocate, American Bar Association, 1996; “Gender Fairness Strategies: Maximizing Our Gains,” proposal submitted to the State Justice Institute, May 1997

Women in the Workplace

Background



Question 10 How many women work in the United States?

Answer According to the U.S. Department of Labor, nearly 60 percent of women over the age of 16 were participants in the workforce in the United States in 1997. The number of women in the workforce doubled between 1970 and 1997. It is expected that 61.4 percent of women will be in the labor force by 2006.

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, January 1998.

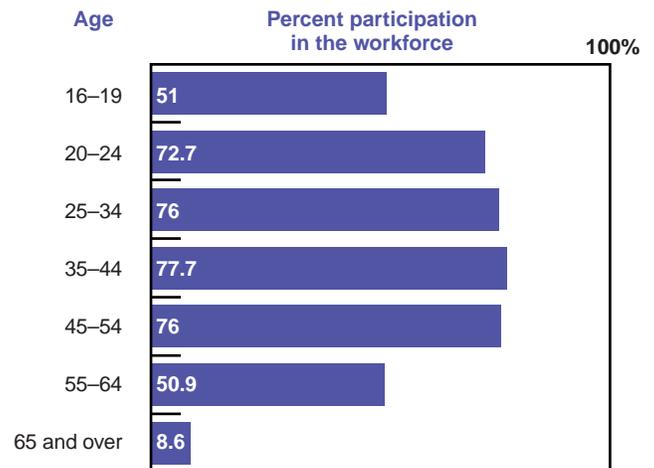


Question 11 In what age group does participation in the labor force peak?

Answer In 1997, women's participation in the labor force peaked between the ages of 35 and 44, at 77.7 percent. Participation between the ages of 20 and 24 was 72.7 percent, and between the ages of 25 and 34 it was 76 percent. This is an interesting statistic, since these are also the ages when women are most likely to be bearing and caring for children.

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, January 1998.

Graph 4 / **Women's Participation in the Workforce by Age, 1997**



Source: U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, January 1998.



Question 12 What proportion of the labor force is made up of women?

Answer Women accounted for 46 percent of the total labor force in 1997. It is projected that this will rise to 47 percent by 2006. The number of women in the labor force is growing faster than the number of men. Between 1996 and 2006, women will account for nearly 60 percent of the growth in the total labor force.

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, January 1998.



Question 13 Where is the growth in women's participation in the labor force taking place?

Answer Between 1964 and 1996, about 60 million jobs were added to the labor force, doubling the number of jobs. Of that growth, 38 million were women, 23 million were men. The largest growth was in the service industries (42 percent net growth), in the retail business (21 percent net growth) and in government (16 percent net growth).

Job growth for women was strongest in services, retail and government. For every job added for men in services and government, two were added for women. For every two jobs added for men in retail sales, three were added for women. Job growth in services was dominated by the six million new jobs for women in health services, and government growth was largely due to increases in the growth of jobs in education. Nearly four million women were added in state and local education jobs between 1964 and 1996.

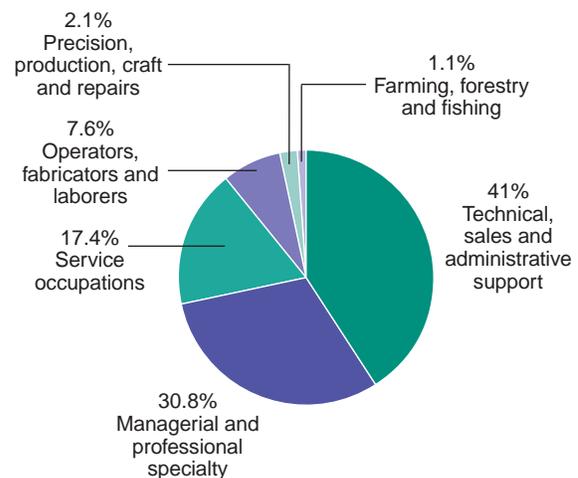
Women's job growth lagged behind that of men in manufacturing.

Source: U.S. Department of Labor, *Women's Jobs 1964-1996: More Than 30 Years of Progress*



Question 14 Among women workers, what jobs are they most likely to have?

Graph 5 / Job Categories of Working Women, 1997



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



Question 15 Among all workers, which jobs are most often held by women?

Answer

Table 2 / 20 Jobs Most Often Held by Women, 1997

Occupation	Percent female
Secretaries	98.5%
Receptionists	96.5
Registered nurses	93.5
Bookkeepers, accounting and auditing clerks	92.3
Hairdressers and cosmetologists	90.4
Nursing aides, orderlies and attendants	89.4
Elementary school teachers	83.9
Cashiers	78.3
Waiters and waitresses	77.8
Administrative support	76.8
Investigators and adjustors, excluding insurance	74.8
Textile, apparel and furnishing machine operators	72.1
Sales workers, other commodities	69.2
Secondary school teachers	58.4
Accountants and auditors	56.7
Cooks	41.8
Sales supervisors and proprietors	38.4
Janitors and cleaners	34.0
Machine operators	31.5
Managers and administrators	30.2

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



Question 16 How many women are self-employed?

Answer The number of self-employed women in nonagricultural jobs has grown from 2.8 million in 1987 to 3.6 million in 1997. In 1992, women owned 6.4 million businesses, representing one-third of all domestic firms, and 40 percent of all retail and service firms.

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, January 1998.



Question 17 What jobs are least likely to be held by women?

Answer Only 14 percent of working women held so-called nontraditional jobs — where women hold less than 25 percent of the total jobs — in 1997. Nontraditional occupations include engineering, architecture, law enforcement, clergy, truck driving and construction. Only 0.8 percent of airline pilots and navigators are female.

Table 3 / Women in Nontraditional Occupations, 1997

Occupation	Percent female
Industrial engineering technicians	25.0%
Sales representatives, commodities, except retail	24.9
Operators, fabricators, and laborers	24.0%
Metal and plastic processing machine operators	23.4
Farm operators and managers	23.2
Messengers	23.0
Correctional institution officers	22.9
Barbers	22.8
Sales workers, hardware and building supplies	22.5
Chemical technicians	22.3
Fabricating machine operators ¹	22.2
Hand cutting and trimming occupations	22.2
Sheriffs, bailiffs, and other law enforcement officers	21.8
Handlers, equipment cleaners, helpers, and laborers	20.3
Upholsterers	20.0
Butchers and meat cutters	19.4
Farm workers	19.0
Supervisors, motor vehicle operators	19.0
Guards and police, excluding public service	18.3
Architects	17.7
Dentists	17.4
Drafting occupations	16.7
Announcers	14.7
Metal working and plastic working machine operators	14.5
Electrical and electronic technicians	14.3
Meter readers	13.7
Clergy	13.7
Shoe repairers	13.3
Printing press operators	13.2
Supervisors, protective service	12.7
Adjusters and calibrators	12.5
Funeral directors	12.5
Police detectives, public service	11.7

Occupation	Percent female
Hand molders and shapers, excluding jewelers	11.1
Drivers, sales workers	10.7
Baggage, porters, and bellhops	10.6
Sales workers, motor vehicles and boat	10.5
Surveying and mapping technicians	10.5
Podiatrists	10.0
Mechanical engineering technicians	10.0
Engineers	9.6
Miscellaneous precision workers ¹	9.5
Construction inspectors	9.1
Sheet metal workers	9.1
Sales workers, parts	8.9
Parking lot attendants	8.7
Taxicab drivers and chauffeurs	8.5
Grounds keepers and gardeners, except farm	6.9
Truck drivers	5.7
Welders and cutters	5.6
Precision woodworking occupations	5.2
Machinists	5.1
Water, sewage, and power plant and system operators	4.7
Forestry and logging occupations	4.6
Material moving equipment operators	4.5
Fishers, hunters, and trappers	4.1
Mechanics and repairers	3.9
Firefighting and fire prevention occupations	3.4
Transportation occupations, except motor vehicles	3.4
Supervisors, related agricultural occupations	3.3
Supervisors, farm workers	2.9
Construction trades	2.7
Pest control occupations	2.0
Extractive occupations	1.4
Airplane pilots and navigators	0.8
Tool and die makers	0.8

Source: U.S. Department of Labor, Bureau of Labor Statistics, Women's Bureau

¹ Not elsewhere classified



Question 18 Do recessions affect growth in women’s employment?

Answer Yes. The percentage of women who participated in the labor force grew every year from shortly after World War II until the 1980s. During the recession of the 1980s, the growth of women’s jobs slowed, and in the early 1990s there was no increase in the proportion of women in the labor force. Growth resumed beginning in 1994.

A number of factors influenced the slow-down in women’s labor force participation, including a decline in participation among women under 25 and a long-term slowdown in participation growth among women in their prime working age group. When these factors combined, the rise in women’s labor force participation stopped during the 1990-91 recession. When the economy began to recover in 1993, so did the participation of women in the labor force, and it is now growing at a rate faster than that of men in many sectors of the economy.

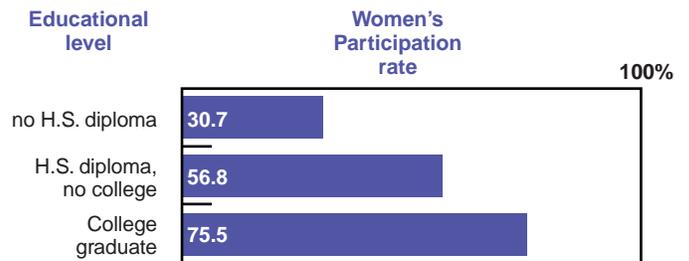
Source: U.S. Department of Labor, Bureau of Labor Statistics, *Women’s Jobs: 1964-1996: More than 30 years of progress*; Hayghe, Howard V., *Developments in women’s labor force participation*, September 1997



Question 19 What are some of the factors that affect women’s participation in the workforce?

Answer

Graph 7 / The Effect of Educational Attainment, 1997



Source: U.S. Department of Labor, Bureau of Labor Statistics, *Facts on Working Women*

Graph 6 / The Effect of Marital Status, 1997



Source: U.S. Department of Labor, Bureau of Labor Statistics, *Facts on Working Women*

Graph 8 / The Effect of the Age of Children, 1997



Source: U.S. Department of Labor, Bureau of Labor Statistics, *Facts on Working Women*



Question 20 What percentage of women worked part-time jobs in 1997?

Answer Twenty-six percent of American women, or 16 million, worked part time. Seventy-four percent, or 44 million, worked full time, 35 or more hours per week.

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Facts on Working Women*



Question 21 How many women held more than one job?

Answer Nearly 4 million women held more than one job in 1997. Many women who hold more than one job are also contingent workers — workers at jobs who do not have an agreement for long-term employment. Women are half of the contingent workers in America. Contingent workers include most part-time workers, independent contractors, and temporary employees.

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Facts on Working Women*



Question 22 Are single-sex private clubs or service organizations legal?

Answer The Civil Rights Act of 1964 prohibits race-based discrimination in public accommodations, such as hotels, restaurants, retail stores, parks and similar venues. However, because federal law is silent as to sex discrimination in public facilities, challenges to male-only clubs have been based on state laws and local ordinances that specifically prohibit gender discrimination in public accommodations. Challenges to such state laws on the grounds that they violate First Amendment freedom of association protections have been rejected by the courts.

Courts have generally exempted “distinctly private” clubs from public accommodations law. To determine whether a club is “distinctly private,” courts look to the

number of its members, how selective its membership criteria are, and whether non-members are regularly allowed to use its facilities or participate in its activities. Most business-oriented “city clubs,” athletic clubs and service organizations are not considered “distinctly private” under this definition. Gender-based policies in even “distinctly private” clubs could be unconstitutional if the organization has been granted tax-exempt status by the state or federal government. Some governmental bodies will also refuse to grant liquor licenses to clubs that do not comply with anti-discrimination laws.

Nevertheless, many prestigious clubs continue to bar women.

Sources: *Board of Directors of Rotary International v. Rotary Club of Duarte, Cal.*, (S.Ct. 1987); *New York State Club Association, Inc., v. City of New York* (S.Ct. 1988); *Bob Jones University v. Simon* (S.Ct. 1974); Taylor, Stuart Jr., “Justices Back New York Law Ending Sex Bias by Clubs,” *New York Times*, June 20, 1988.

Equal Employment



Question 23 How many gender discrimination complaints are made?

Answer More than 50,000 sex discrimination complaints were filed with the Equal Employment Opportunity Commission in 1995, and with state and local agencies that handle these complaints, including sexual harassment claims.

Source: U.S. Equal Employment Opportunity Commission National Enforcement Plan



Question 24 Is gender discrimination illegal?

Answer Yes. Title VII of the Civil Rights Act of 1964, as amended, which covers employers with 15 or more full-time or part-time employees, prohibits discrimination in hiring, firing and other conditions of employment on the basis of race, color, religion, sex or national origin. Many states have laws prohibiting sex discrimination in employment, the Fourteenth Amendment to the Constitution prohibits discrimination by public employees, and the Equal Pay Act prohibits pay discrimination.

Source: U.S. Equal Employment Opportunity Commission, Statutory Authority



Question 25 What agency enforces these federal laws?

Answer The Equal Employment Opportunity Commission was established by Title VII of the Civil Rights Act of 1964, and began operating on July 2, 1965. The EEOC is the federal agency that enforces the federal statutes against employment discrimination, including Title VII of the Civil Rights Act as amended by the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, Title I of the Americans with Disabilities Act of 1990, and Section 501 of the Rehabilitation Act of 1973.

Source: U.S. Equal Employment Opportunity Commission, Statutory Authority



Question 26 What is the process of filing a charge of discrimination?

Answer A woman who believes she has been discriminated against because of gender by an employer, labor union or employment agency when applying for a job or on the job, or who thinks she has been discriminated against for opposing a practice prohibited by law or for participating in an equal opportunity matter, may file a charge of discrimination with the EEOC.

Title VII charges must be filed within 180 days of the alleged discriminatory act, unless the state or locality has an antidiscrimination law and an agency with authority to grant relief. In that case, the charge must first be presented to the state or local agency, and then filed with the EEOC either within 300 days of the discriminatory act or

30 days after receiving notice from the state or local agency that it has terminated its process — whichever date is earlier. Missing these deadlines may result in not being able to obtain a remedy. Charges can be filed in person, by mail or by telephone.

The Equal Pay Act does not require charges to be filed with the EEOC before a private suit is filed, although such a charge may be filed, and some types of wage discrimination is also a violation of Title VII. If an equal pay charge is filed with the EEOC, the procedure is the same as under Title VII, but the time limits for filing in court are different under the Equal Pay Act. Anyone who thinks they have been the victim of an Equal Pay Act violation should contact the EEOC or a lawyer as soon as possible to learn more about these deadlines.

Source: U.S. Equal Employment Opportunity Commission, Filing a Charge



Question 27 Does the EEOC investigate employers on its own?

Answer Yes. Individual commissioners may initiate charges that the law has been violated.

On December 5, 1997, the EEOC announced that it had contracted with the Fair Employment Council of Greater Washington, D.C., and the Legal Assistance Foundation of Chicago to conduct pilot projects to study the use of “testers” to detect hiring discrimination. The testing localities have not been announced.

Because discrimination in hiring is difficult to detect, applicants often do not know that they are being treated

differently as a result of their race, gender, ethnicity, disability or age. Testing involves the careful matching of applicants so that their job qualifications and other relevant characteristics match. The tester pairs differ only in race, gender, or other protected category. If there is unequal treatment, other pairs may be sent in to determine if there is a pattern of discrimination. The EEOC will also rely on the results to help employers design non-discriminatory hiring procedures.

Source: U.S. Equal Employment Opportunity Commission, EEOC Enforcement Activities; U.S. Equal Employment Opportunity Commission, Press release, “EEOC Announces Pilot Projects to Test for Employment Discrimination”



Question 28 How is a claim of discrimination handled by the EEOC?

Answer The EEOC must investigate all charges to determine if there is reasonable cause to believe that discrimination has occurred. If the EEOC finds “cause,” it must seek to conciliate the charge to reach a voluntary resolution between the charging party and the employer. If conciliation is not successful, the EEOC may bring suit in federal court. When the EEOC has finished its own processing of a case, or earlier if the charging party requests it, the Commission issues a “right to sue” letter that enables the charging party to bring an individual action in court.

In order to handle the huge increase in cases that are being filed, the EEOC has developed a new processing system that prioritizes cases for handling. Category A cases are priority charges to which the office devotes investigative and settlement efforts. Category B charges are those where there appears to be some merit, but more investigation is needed before a decision can be made. Category C charges are those where jurisdiction or facts are lacking, and they are closed immediately.

Settlement is encouraged at all stages of the procedure. The EEOC has adopted a voluntary mediation-based resolution process to facilitate this goal.

Source: U.S. Equal Employment Opportunity Commission, EEOC Enforcement Activities; U.S. Equal Employment Opportunity Commission, National Enforcement Plan



Question 29 When are cases sent to a state or local agency for enforcement?

Answer The EEOC contracts with about 90 fair employment practices agencies to process more than 48,000 discrimination charges each year. The charges may be raised under state and local laws as well as under the federal laws enforced by the EEOC.

Source: U.S. Equal Employment Opportunity Commission, EEOC Enforcement Activities; U.S. Equal Employment Opportunity Commission, National Enforcement Plan



Question 30 What is the “glass ceiling”?

Answer The glass ceiling is a level beyond which women and minorities are unable to advance in a workplace. In some workplaces, the glass ceiling blocks access to top jobs; in others, whole categories of jobs may be considered off-limits to female or minority employees.

Source: A Women Employed Fact Sheet: The Glass Ceiling



Question 31 What evidence suggests that a glass ceiling is in place in American workplaces?

Answer In 1996, women constituted 44 percent of the workers in executive, administrative and managerial occupations, up from 39 percent in 1988. But women account for less than five percent of top executives; 95 percent of senior managers (vice presidents and above) of Fortune 1500 companies are men.

But women are most likely to be managers in female dominated fields. Women held 75 percent of all managerial positions in medicine and health, for example, and half of the jobs in finance, personnel and labor relations, accounting and auditing, and buying.

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, January 1997; U.S. Department of Labor, Women's Bureau, Facts on Working Women, *Women in Management*; A Women Employed Fact Sheet: The Glass Ceiling



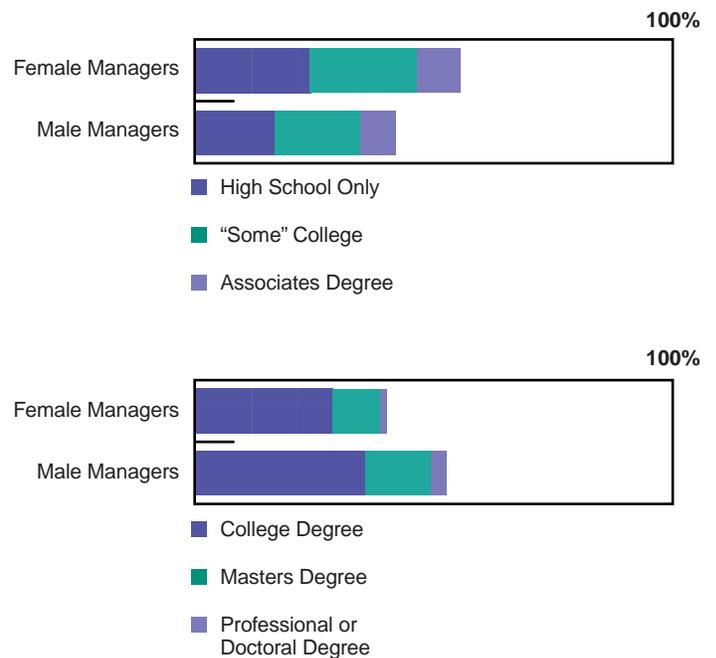
Question 32 Does education explain the differences in the numbers of male and female managers?

Answer When men and women of equal education are compared, there are still disparities in the percentages of male and female managers.

Women managers were less likely to have bachelor and graduate degrees than male managers, and more likely to have a high school diploma, "some" college, or an associates degree. In 1996, 24.3 percent of women managers were high school graduates with no college, 22.1 percent had "some" college, and 9.9 percent had an associate degree, compared to 17.5 percent, 18.5 percent and 7.4 percent of male managers, respectively. But when managers with college and graduate degrees are compared, the relationship reverses. In 1996, 36.2 percent of male managers had a college degree, 14.2 percent had a masters degree, and 3.2 percent had a professional or doctoral degree, compared with 29.7 percent, 10.2 percent, and 1.5 percent of women, respectively.

These trends may be a reflection of the concentration of women in lower-paying managerial positions.

Graph 9 / Education Levels of Male and Female Managers, 1996



Source: U.S. Department of Labor, Women's Bureau, Facts on Working Women, *Women in Management*



Question 33 Does marital status affect a woman's management opportunities?

Answer In 1996, married women and men with a spouse present were most likely to hold executive, administrative and managerial occupations. However, a higher percentage of men (74 percent) were married than women (61 percent). Nearly twice as many women managers (20.2 percent) as male managers (10.6 percent) were divorced.

Source: U.S. Department of Labor, Women's Bureau, Facts on Working Women, *Women in Management*



Question 34 Are women represented on corporate boards in proportions equal to men?

Answer In 1997, women held 10.6 percent of the board positions at Fortune 500 companies — 642 out of 6,081. In 1996, they held 10.2 percent of the Fortune 500 board seats — 626 out of 6,123. Some 419 corporate boards — 84 percent — now have at least one women director, up from 416 in 1996. Ninety-six percent of

Fortune 100 companies have at least one woman board member. For the first time since the group Catalyst began tracking women's participation on corporate boards in 1993, one Fortune 500 corporation — Golden West Financial based in Oakland, Calif. — had an equal number of men (five) and women (five) on its board, along with a female chief executive.

Source: Catalyst, *Catalyst 1997 Census of Women Directors*, 1997

Equal Pay



Question 35 Is it legal to discriminate between men and women on the basis of pay?

Answer The Equal Pay Act became effective on June 11, 1964, one year after it was signed by President John F. Kennedy. It requires that employees doing work requiring equal skill, effort, and responsibility, which is being performed under similar conditions, must be paid equal wages, regardless of gender.

Source: Department of Labor, Women's Bureau, "Equal Pay: A Thirty-Five Year Perspective"



Question 36 Are all differences in pay a violation of the Equal Pay Act?

Answer No. It is legal to pay different wages based upon differences in the job, differences in the skill level of the employee, seniority, a merit system, the quantity or quality of production, or any other factor than sex.

Source: 29 U.S.C. Section 206



Question 37 Can an employer comply with the Equal Pay Act by lowering the salaries paid to men in response to a complaint?

Answer No. It is unlawful for the employer to reduce the wages of any employee in order to comply with the Act.

Source: 29 U.S.C. Section 206



Question 38 Who is covered by the Equal Pay Act?

Answer This is a complex question. Generally, the Act covers employers engaged in commerce or in the production of goods in commerce. There are some exceptions, and some exceptions have been repealed. For example, in 1972, Equal Pay Act protection was extended to executive, administrative, professional, and outside sales employees, all of whom had previously fallen within an exception.

Most government employees are covered by the Act, including teachers, post office employees, employees in government agencies, and civilians in the military.

Whether or not an employer is engaged in commerce has been the subject of extensive litigation.

Since the Equal Pay Act is a part of the Fair Labor Standards Act, an employer must fall within the scope of both acts to be covered.

Source: 29 U.S.C. Section 203; 29 U.S.C. Section 206



Question 39 What agency enforces the Equal Pay Act?

Answer The EEOC has enforced the Equal Pay Act since 1978.

In addition, the Office of Federal Contract Compliance Programs began successful resolution of wage discrimination cases involving federal contractors in the early 1990s, under Executive Order 112246, which requires that non-exempt federal contractors take affirmative action in employment, and prohibits discrimination in employment on the basis of sex.

Source: U.S. Department of Labor, Women's Bureau, *Equal Pay: A Thirty-Five Year Perspective*, Appendix A: Equal Pay Chronology; U.S. Equal Employment Opportunity Commission, Filing a Charge



Question 40 Does an Equal Pay Act claim have to be filed with the EEOC?

Answer Not unless the wage discrimination is also a violation of Title VII, in which case the claim must be filed first with the EEOC. Otherwise, it is permissible to file a private suit first. If an Equal Pay Act claim is filed with the EEOC, the procedure is the same as under Title VII, although the time limit for filing private suits is different.

Under the Equal Pay Act, most suits for the recovery of unpaid wages have to be brought within two years of the violation of the Act. This is extended to three years for willful violations.

Since the procedures for filing claims under the Equal Pay Act and Title VII are complex, a person who may have a claim should contact either the EEOC or a lawyer immediately. Failure to act promptly, and within the prescribed procedures, may result in a loss of the claims under the statute.

Source: U.S. Equal Employment Opportunity Commission, Filing a Charge; 29 U.S.C. Section 255



Question 41 What can an employee recover under the Equal Pay Act?

Answer The employee can recover the wages that were not paid in violation of the Act, plus lawyer's fees and costs.

The Secretary of Labor may also pursue a claim under the Equal Pay Act if there is a written request by the employee. The employee cannot independently recover unpaid wages if the Secretary of Labor has already recovered back wages for the violation, or filed suit for the violation. The Secretary may also obtain a court order restraining violations of the Act. Willful violations are also a crime, with a fine of up to \$10,000 and imprisonment available after a second conviction.

Source: 7 ALR Fed 707 Section 2(a)



Question 42 Do women and men earn equal pay?

Answer No. Statistics show that men and women do not generally earn equal pay.

Overall, men earn more than women in most employment categories, at most age levels, and at all education levels. The earnings gap — the measure of the difference between the salaries earned by men and women, controlling for variables such as education, experience, years at position, and the like — persists regardless of how wages

are measured. In 1997, women paid hourly wages earned 80.8 percent of men's earnings. For those paid weekly, women earned 74.4 percent of men's. In 1996, women's median annual pay was 74 percent of men's. (These three different measures are used because annual and weekly salaries tend to be for full-time workers, while hourly salaries are more likely to include both full- and part-time workers.)

Sources: U.S. Department of Labor, Women's Bureau, Facts on Working Women, *Earnings Differences Between Women and Men*; U.S. Department of Labor, *Women's Earnings as a Percentage of Men's, 1979-1996*; U.S. Department of Labor, Women's Bureau, *Equal Pay: A Thirty-Five Year Perspective*



Question 43 Has the earnings gap changed over time?

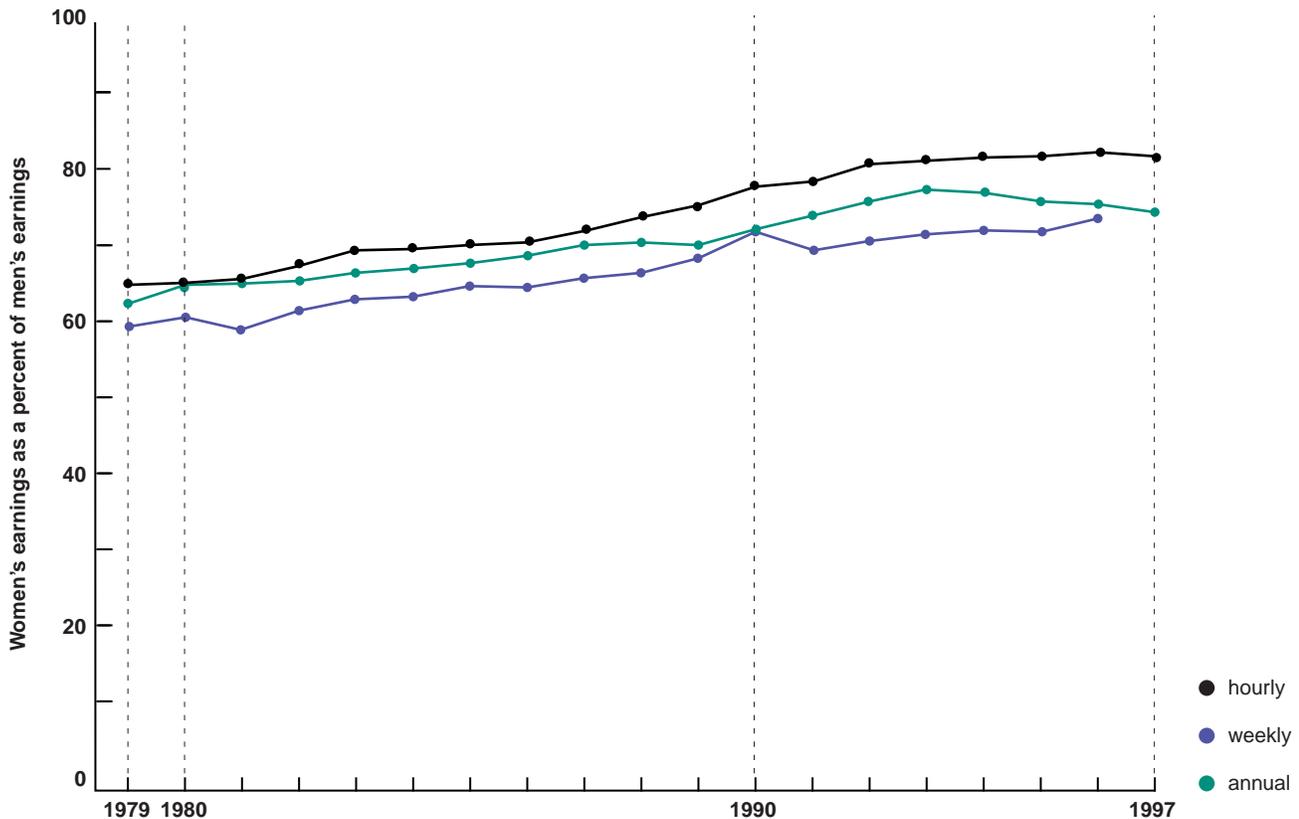
Answer Yes. In 1979, women earned 59.7 percent of the annual salary earned by men. In 1996, women earned 74 percent of the annual salary earned by men. The earnings gap has narrowed when we look at the hourly and weekly salary statistics as well.

Over the 41-year period that this issue has been studied, women’s earnings have increased by 1.3 percent, while men’s earnings have grown by 1.1 percent. Researchers have suggested that much of the gap has disappeared because the skill of working women, as measured by education and experience, increased relative to the skill of working men. Research also suggests that job experience had a greater impact than education.

But despite the increase in education and experience held by women workers, the wage gap has not disappeared. And statistics suggest that the wage gap has narrowed at times not because the wages of women have risen, but because men’s real wages (those measured in constant dollars) have fallen. Between 1973 and 1985, real earnings for women increased by almost two percent, while real earnings for men fell 10.7 percent. Between 1985 and 1990, the wage gap continued to narrow, reaching 75 percent for women who worked full time and year round. But between 1991 and 1996, the gap increased, falling to between 70 and 72 percent, rising in 1996 to 73.8 percent.

Cite: U.S. Department of Labor, *Women's Earnings as a Percent of Men's*, 1979-1996; U.S. Department of Labor, Women's Bureau, *Facts on Working Women, Earnings Differences Between Women and Men*; U.S. Department of Labor, Women's Bureau, *Equal Pay: A Thirty-Five Year Perspective*

Graph 10 / **The Persistent Wage Gap, 1979–1997**



Source: BLS Bulletin 2340 and unpublished tables, Employment and Earnings, January issues; U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P-60, selected issues



Question 44 Do men and women earn equal salaries when they work in the same occupations?

Answer Women generally earn less than men even when they hold the same jobs. Statistics for weekly wages in 1997 showed that women earned less than men in 99 percent of all occupations for which data are available.

Sometimes, in some categories of employment, the earnings gap disappears for a time. For example, in 1992, women earned 104 percent of the median weekly salary earned by men employed in nursing; women constituted 93.5 percent of all people in this occupation. This phenomenon was not limited to job categories where women predominated. For example, women mechanics earned 105.4 percent of men's salary, although they constituted only 3.3 percent of the profession.

In the 10 leading occupations for women during the years 1985 through 1997, men earned higher median weekly earnings in every job category, in every year.

Source: U.S. Department of Labor, Women's Bureau, Facts on Working Women, *Earnings Differences Between Women and Men*; U.S. Department of Labor, Women's Bureau, *Equal Pay: A Thirty-Five Year Perspective*

Table 4 / Wage Gap in Women's 20 Leading Occupations, 1997

Occupations	Percent Women	Ratio of Women's Annual Earnings to Men's Annual Earnings
Secretaries	98.5%	N.A.
Receptionists	96.5	N.A.
Registered nurses	93.5	90.6
Bookkeepers, accounting and auditing clerks	92.3	93.7
Hairdressers and cosmetologists	90.4	N.A.
Nursing aides, orderlies, and attendants	89.4	86.8
Elementary school teachers	83.9	91.1
Cashiers	78.3	92.2
Waiters and Waitresses	77.8	81.7
Administrative support occupations	76.8	—
Investigators and adjusters, excluding insurance	74.8	80.9
Textile, apparel and furnishing machine operators	72.1	84.4
Sales workers, other commodities	69.2	73.5
Secondary school teachers	58.4	90.2
Accountants and auditors	56.7	74.6
Cooks	41.8	81.7
Sales supervisors and proprietors	38.4	70.8
Janitors and cleaners	34.0	83.3
Machine operators, assorted materials	31.5	73.0
Managers and administrators	30.2	—

N.A.: Median not available where base is less than 50,000 male workers

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



Question 45 Can factors other than discrimination account for the wage gap?

Answer It is possible that other factors contribute to the wage gap. For example, seniority tends to raise income, all other factors remaining constant. One study suggests that 10 years of job seniority can account for a 25 percent increase in the typical worker's wage.

Data show that women spend more time away from work. For all men, only 1.6 percent of all potential work-years were spend away from work. For women, this figure is 14.7 percent of all potential work-years. This has an

impact on seniority, and in turn, on income. If this time away from work is a choice made by women workers, and not the result of discriminatory pay or hiring practices, then it is a nondiscriminatory factor that can account for the wage gap.

Other studies have shown that turnover is higher for women than for men. Fewer turnovers tend to increase seniority. Again, if the reasons that women leave jobs are not based upon discrimination in the workplace, this is another factor that can account for the wage gap.

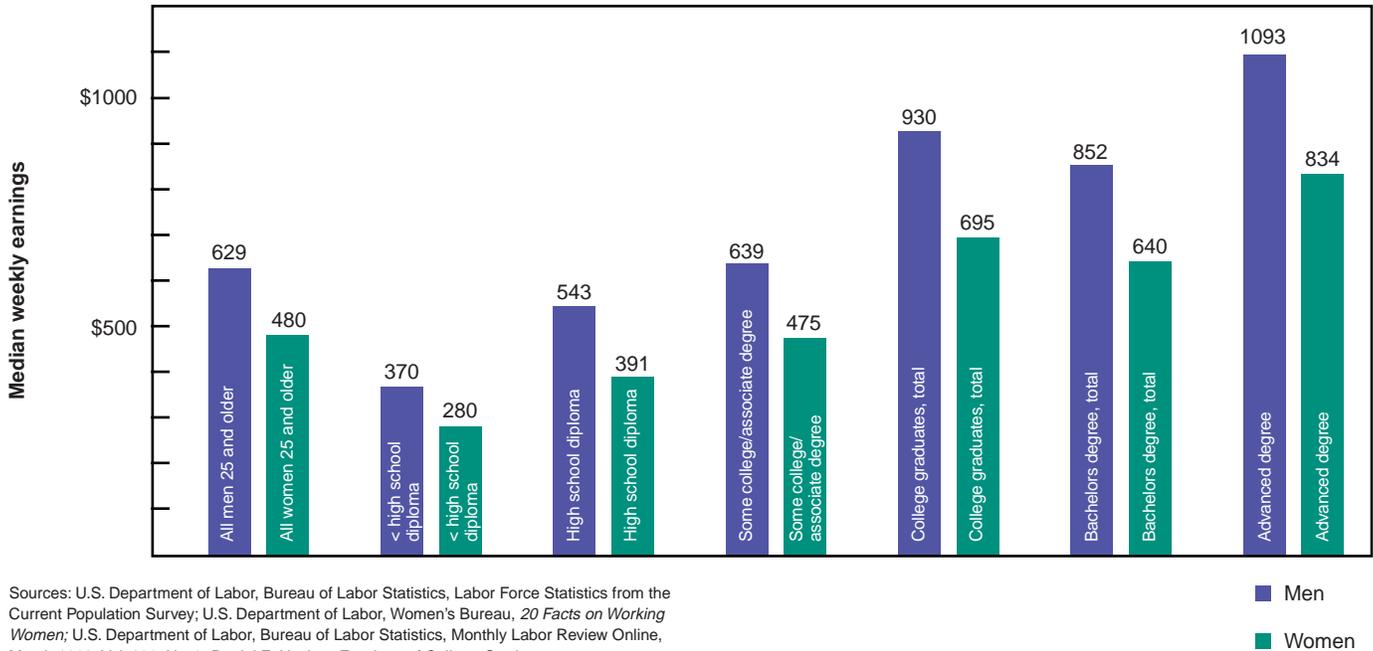
Sources: Department of Labor, Women's Bureau, Facts on Working Women, *Earnings Difference Between Women and Men*; Copley News Service, June 12, 1998



Question 46 How do men’s and women’s salaries compare when you control for level of education?

Answer Overall, men make more than women at every education level.

Graph 11 / **Men’s and Women’s Weekly Earnings by Educational Level** first quarter 1998



Sources: U.S. Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey; U.S. Department of Labor, Women’s Bureau, *20 Facts on Working Women*; U.S. Department of Labor, Bureau of Labor Statistics, Monthly Labor Review Online, March 1998, Vol. 121, No. 3, Daniel E. Hecker, *Earnings of College Graduates: women compared with men* (Abstract)

■ Men
■ Women



Question 47 Does union membership affect the wage gap?

Answer Yes. In 1994, a study found that women represented by unions earned weekly wages that were 35 percent higher than women in unorganized workplaces. Union women earned weekly wages that were higher than those of men who were not represented by unions.

Source: U.S. Department of Labor, Women’s Bureau, *Worth More Than We Earn: Fair Pay for Working Women*

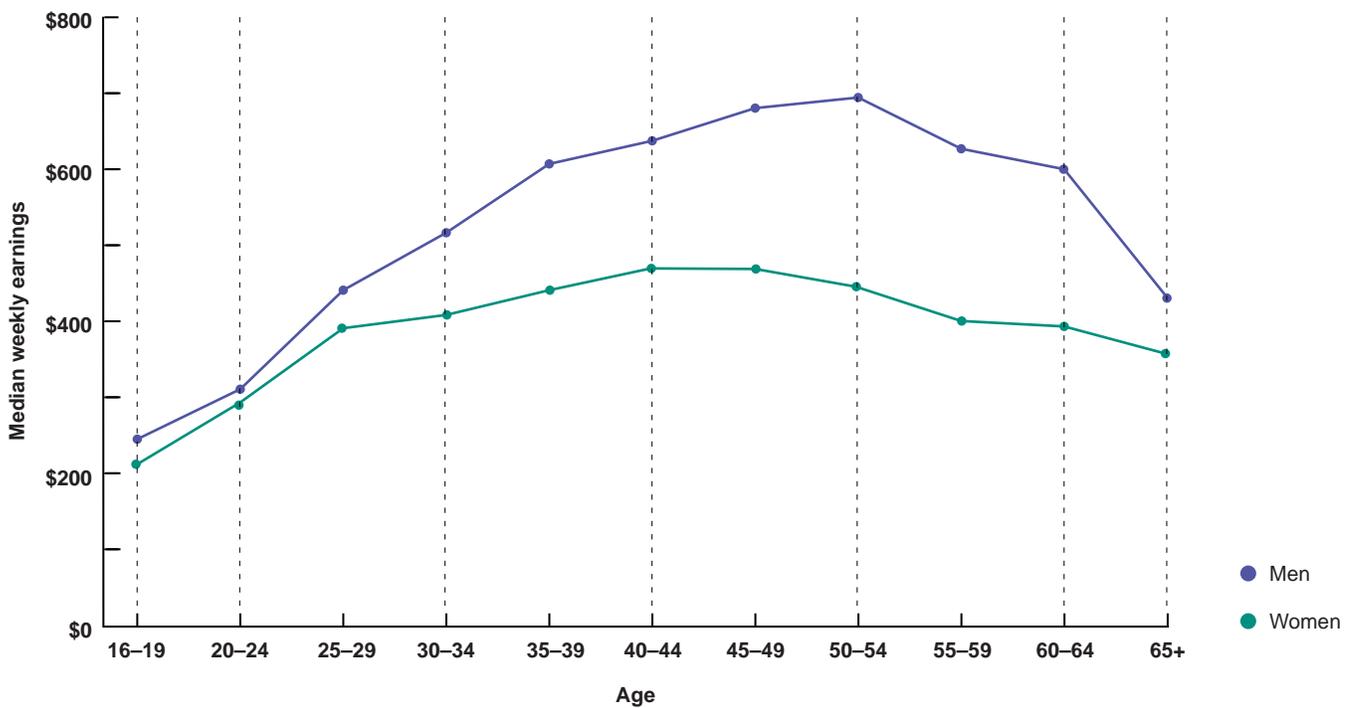


Question 48 Is the wage gap different at different ages?

Answer Yes. Although the wage gap has been gradually decreasing over time, younger women have generally experienced a smaller wage gap than older women. The gap grows for almost every working year, decreasing only when women reach their 60s.

Sources: U.S. Department of Labor, Women's Bureau, *Worth More Than We Earn: Fair Pay for Working Women*; U.S. Department of Labor, Women's Bureau, *Equal Pay: A Thirty-Five Year Perspective*

Graph 12 / Effect of Age on the Wage Gap, 1995



Source: U.S. Department of Labor, Women's Bureau, *Worth More Than We Earn: Fair Pay for Working Women*



Question 49 Do women's earnings equal men's when they enter nontraditional occupations?

Answer Generally not. A nontraditional occupation is defined as one in which women comprise 25 percent or fewer of the workers. Women's salaries in these nontraditional occupations are substantially higher, on average,

than salaries in traditional jobs. Yet women still earn less than their male counterparts in these professions. (Women's educational gains have increased their participation in these fields, so that some professions — lawyers and doctors, for example — are no longer considered nontraditional.)

Source: U.S. Department of Labor, Women's Bureau, *Equal Pay: A Thirty-Five Year Perspective*



Question 50 Can women earn salaries equal to men's by choosing the same fields of study and occupations?

Answer No. A recent report studied men's and women's salaries for 130 different major fields. It compared them for college major, occupation, and age. The study found that even where characteristics of the men and women were similar, the wage gap narrowed but did not disappear.

Women earned 100 percent or more of men's salaries in 8.5 percent of the major fields, representing two percent of women's employment.

In about half the fields, accounting for 48 percent of women's employment, women earned at least 87 percent of men's salaries. In the remaining 51 major fields, or 39 percent of women's employment, women earned less than 87 percent of men's pay.

The fields that were the best for women in the 25 to 34 age group were accounting, chemistry, computer and information sciences, engineering, mathematics and pharmacy.

Sources: U.S. Department of Labor, Women's Bureau, *Equal Pay: A Thirty-Five Year Perspective*, citing Bureau of Labor Statistics, *Monthly Labor Review Online*, March 1998, Vol. 121, No. 3, Daniel E. Hecker *Earnings of College Graduates: women compared with men*

Sexual Harassment



Question 51 What is sexual harassment?

Answer Sexual harassment is unwanted sexual attention in the workplace. The harasser may be male or female, and a recent case alleging same-sex harassment was upheld by the Supreme Court.

It includes any unwelcome verbal or physical sexual conduct, such as:

- unwanted touching
- conversation with a sexual content
- asking for sex or making sexual advances
- sexually explicit derogatory statements
- sexually discriminatory remarks.

It is sexual harassment if this conduct in the workplace is offensive or objectionable to the target, or causes the target physical discomfort, creates a hostile environment, or interferes with the target's job performance.

For example, sexual harassment may include verbal abuse or jokes, or subtle sexual touching such as patting, pinching or brushing against another. It can range from leering or the display of sexually explicit or degrading material, to physical assault.

Sources: Women Employed: *Sexual Harassment and Your Rights on the Job*; U.S. Department of Labor, Women's Bureau, *Know Your Rights: Sexual Harassment*; U.S. Equal Employment Opportunity Commission, *Facts About Sexual Harassment*



Question 52 Is sexual harassment illegal?

Answer Yes. Sexual harassment violates Title VII of the Civil Rights Act of 1964. It is illegal if someone must go along with it to get or keep a job, or to receive a benefit or a vacation, or if it otherwise influences decisions that are made about your job, or if the harassment creates a hostile or intimidating work environment making it hard for someone to do their job.

The law covers employers with at least 15 employees.

Sources: Women Employed: *Sexual Harassment and Your Rights on the Job*; U.S. Department of Labor, Women's Bureau, *Know Your Rights: Sexual Harassment*



Question 53 Does the employer have an obligation to prevent or stop sexual harassment in the workplace?

Answer Yes. Employers are liable for sexual harassment by supervisors in the following cases.

- If an employee is subjected to sexual harassment—whether it was “quid pro quo” (when “going along” with sexual advances becomes a condition of employment) or “hostile environment”—and suffers the loss of a tangible work benefit, the employer is liable even if it did not know about the harassment or had strong anti-harassment policies in place.
- In cases where an employee does not suffer loss of tangible job benefits, employers are still liable unless they

can prove a) that they exercised reasonable care to prevent and correct promptly any sexually harassing behavior and b) that the harassed employee “unreasonably failed” to take advantage of opportunities provided by the employer to prevent or correct the behavior or to avoid the harassment.

Employers are liable for harassment by co-workers or non-employees temporarily in the workplace if 1) the employer knew or should have known about the harassment; 2) the employee informed a supervisor about the incident; and 3) the employer failed to take appropriate action.

Sources: *Women Employed: Sexual Harassment and Your Rights on the Job*; U.S. Department of Labor, Women's Bureau, *Know Your Rights: Sexual Harassment*



Question 54 Does someone need witnesses to make a sexual harassment claim?

Answer A claim can be made without a witness, but it is important that a written record be kept of the events that make up the claim, and that the employer is alerted as soon as possible. The employer's policy for such reports should be followed, and any written evidence or documentation should be retained.

In cases where a harassed employee did not suffer the loss of a tangible job benefit, an employer will not be liable for damages if the harassed employee failed to take

reasonable measures to take advantage of avenues provided by the employer to stop or avoid the harassment, so long as those avenues were appropriate and effective.

The employee should also keep a record of her or his work performance evaluations, in order to avoid a charge that the complaint is being made to cover up poor work performance.

Speaking to co-workers about the incident soon after it happens will help to establish that the behavior occurred, and may even reveal additional employees to whom it has happened.

Sources: *Women Employed: Sexual Harassment and Your Rights on the Job*; U.S. Department of Labor, Women's Bureau, *Know Your Rights: Sexual Harassment*



Question 55 If the behavior does not stop even after a complaint, what can be done?

Answer An employee who belongs to an employee group or union can contact the representative. There are also many state and local laws against harassment, with local agencies that enforce these laws. If there is a state or local agency authorized to grant or seek relief, the charge must be made to that agency.

The employee also has the right to make a complaint to the EEOC. The complaint must be filed within 180 days of the alleged conduct. In jurisdictions with state or local

agencies, the complaint may be filed within 300 days of the alleged conduct, or 30 days after receiving notice that the state or local agency has terminated its process, whichever is earlier. Not meeting these time deadlines can result in denial of relief.

The EEOC has made cases involving repeated or egregious discrimination, including harassment, one of its top priorities.

A lawyer is not needed to contact the EEOC. The complaint will be handled like other Title VII complaints.

Sources: Women Employed: *Sexual Harassment and Your Rights on the Job*; U.S. Department of Labor, Women's Bureau, *Know Your Rights: Sexual Harassment*; U.S. Equal Employment Opportunity Commission, National Enforcement Plan



Question 56 What remedies are available to an employee who has been sexually harassed?

Answer An employee who has been fired or denied employment may get reinstated. An employee who was denied salary increases because of the harassment can

receive back pay. A court may order the company to stop the conduct. Under the Civil Rights Act of 1991, if a federal court finds that the discrimination was intentional, the employee can also recover damages and other compensatory relief, as well as punitive damages.

Sources: Women Employed: *Sexual Harassment and Your Rights on the Job*; U.S. Department of Labor, Women's Bureau, *Know Your Rights: Sexual Harassment*



Question 57 How common is sexual harassment?

Answer The answer isn't clear. Statistics suggest that harassment is pervasive, however. Complaints filed with the EEOC grew from 6,883 in 1991 to more than 15,000 in 1995, but the rate of growth has leveled off. There were 15,889 complaints filed in 1997.

A 1998 survey of 1,100 businesses conducted by Business and Legal Reports found that 49 percent of respondents had received a sexual harassment complaint in the past year, up from 42 percent in 1992. Ninety percent of the complaints involved a man allegedly harassing a woman. Seventy-two percent of the complaints involved offensive remarks, 59 percent involved jokes or teasing,

and 37 percent involved unwelcome touching. Another 1998 poll conducted for *Newsday* by Hofstra University Business Development Center found that one in four women in Nassau, Suffolk and Queens Counties (New York) said they had been sexually harassed on the job. A survey by the New York based law firm of Jackson, Lewis, Schnitzler & Krupman found that 70 percent of 900 firms polled had dealt with at least one sexual harassment complaint in 1997, down from 92 percent in 1995. A 1995 Department of Defense study found that 78 percent of military women had been sexually harassed by other military personnel on or off duty.

Sources: North Dakota Employment Law Letter, *Statistics Show Increase in Complaints*, May, 1998; Mador, James T., Carrie Mason-Draffen and Randi Feigenbaum, *When Work Turns Ugly*, *New York Newsday*, April 5, 1998; Coburn, Jennifer, *Sexual Harassment: Why is Society Shocked?*, NOW, January 1996; Armour, Stephanie, "Prevention slows sex harassment cases," *USA Today*, May 26, 1998

Pregnancy and Health Issues



Question 58 May an employer discriminate against a woman because she is pregnant?

Answer No. So long as a woman can perform the major functions of her job, an employer cannot fire her, change her responsibilities or refuse to hire her because she is pregnant. An employer cannot refuse to give a promotion or other benefits to a woman because she is pregnant.

Nor can an employer discriminate against a woman because she has had an abortion.

Sources: U.S. Equal Employment Opportunity Commission, *Facts About Pregnancy Discrimination*; U.S. Department of Labor, Women's Bureau, *Know Your Rights: Pregnancy Discrimination*



Question 59 What law prohibits discriminating against a pregnant woman?

Answer The Pregnancy Discrimination Act, which is an amendment to Title VII of the Civil Rights Act of 1964, prohibits discrimination on the basis of pregnancy. Employers with 15 or more employees are subject to its terms.

Sources: U.S. Equal Employment Opportunity Commission, *Facts About Pregnancy Discrimination*



Question 60 May an employer treat pregnancy leave differently than other leaves?

Answer An employer may not single out pregnancy-related conditions and treat them differently under its leave policy. For example, if an employer requires its employees to have a doctor's statement certifying inability to work before giving its employees leave or sick pay, the employer may apply the same standard to pregnancy-related conditions.

If an employee is temporarily unable to perform her job because of pregnancy, the employer must treat her the same as other temporarily disabled employees.

Pregnant employees must be permitted to work as long as they can perform their jobs. An employer may not impose a set leave time after the birth of a child. Finally, employers must hold open a job for a pregnancy leave the same length of time that jobs are left open for other employees on sick leave or disability leave.

Under the Family and Medical Leave Act, employers with 50 or more employees are required to provide up to 12 weeks of unpaid, job-protected leave per 12-month period for childbirth or pregnancy-related health conditions, or for adoption.

Sources: U.S. Equal Employment Opportunity Commission, *Facts About Pregnancy Discrimination*; Women Employed, *Facts About the Family and Medical Leave Act*



Question 61 Do employers have to provide pregnancy-related health insurance?

Answer While employers are not required to provide health insurance, any health insurance an employer does provide must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Coverage is not required for abortion unless the life of the mother is endangered.

If employers provide health insurance to spouses, female spouses must be treated the same as male spouses.

Source: U.S. Equal Employment Opportunity Commission, *Facts About Pregnancy Discrimination*



Question 62 Can employers restrict pregnancy-related benefits to married employees?

Answer No. Benefits must be provided for pregnancy-related conditions if they are provided for any other medical conditions.

Cite: U.S. Equal Employment Opportunity Commission, *Facts About Pregnancy Discrimination*



Question 63 What can an employee do if an employer violates this law?

Answer A claim can be filed with the EEOC for damages for any injury caused by a violation of the law, including pain and suffering caused by the discrimination, just as it can for other violations of Title VII.

There may also be state or local laws that prohibit discrimination on the basis of pregnancy.

In addition, many states pay partial wages for time off for medical conditions, including pregnancy.

Source: U.S. Department of Labor, Women's Bureau, *Know Your Rights: Pregnancy Discrimination*



Question 64 What is the Family and Medical Leave Act?

Answer The Family and Medical Leave Act provides up to 12 weeks of unpaid, job-protected leave per year for childbirth or adoption, or the serious health condition of the employee or an immediate family member.

An employer may choose the 12-month period in which the 12 weeks of leave occurs, as long as the same policy applies to all employees. Leave for the birth or adoption of a child expires at the end of the 12-month period beginning on the date of the birth or adoption.

Source: Women Employed, *Facts About the Family and Medical Leave Act*



Question 65 What employers are covered?

Answer Private employers with 50 or more employees for 20 weeks a year (full or part-time) located within 75 miles, are covered by the Act. A public agency is covered regardless of its size.

Source: Women Employed, *Facts About the Family and Medical Leave Act*



Question 66 What employees are covered?

Answer Employees of covered employers are eligible if they have worked at least 1,250 hours during the 12 months prior to the leave, and for at least 12 months.

The employer may exempt key employees who are among the highest paid 10 percent of the workforce.

Source: Women Employed, *Facts About the Family and Medical Leave Act*



Question 67 What is an immediate family member?

Answer The law defines an immediate family member as a child, spouse, or parent. “Parent” includes a person who has or had responsibilities to care for the employee as a child. No biological or legal relationship is required, but in-laws are not included.

Source: Women Employed, *Facts About the Family and Medical Leave Act*



Question 68 What is a “serious health condition”?

Answer A “serious health condition” is defined as the inability to perform the essential function of the job. If the condition does not require inpatient care, then it must last for more than three calendar days, or require continuing treatment.

Intermittent leave — taken for several days at a time spread over a longer period of time — may be taken if medically necessary, but such leave for the birth or adoption of a child must be approved by the employer. Employers may determine the minimum increment of leave, provided it is one hour or less. The employer cannot require you to take off more than you need. An employee on intermittent leave may be temporarily moved to an alternative position with equivalent pay.

Source: Women Employed, *Facts About the Family and Medical Leave Act*



Question 69 Is notice required to take a leave under the Act?

Answer Yes. If the leave is foreseeable, 30 days notice is required. Otherwise, whatever notice is practicable is necessary for leaves that begin in less than 30 days. If an employee does not give notice for a foreseeable leave, the employer may delay the leave until 30 days after the date of notice.

Source: Women Employed, *Facts About the Family and Medical Leave Act*



Question 70 Does the employer have to give a paid leave?

Answer No. The Act only requires that the employer give 12 weeks of unpaid leave, and that the employee's job be protected during that time period.

Some employers do provide paid leave for pregnancy or other temporary disability. In addition, some states require employers to offer these payments.

Source: Women Employed, *Facts About the Family and Medical Leave Act*



Question 71 What happens to health insurance coverage during an FMLA leave?

Answer Health insurance coverage will be maintained as before the leave. Other employment benefits accrued prior to the leave will not be lost as a result of the leave. An employer may recover its share of the health insurance premiums paid during an unpaid leave if the employee does not return to work after the leave expires, unless the failure to return was the result of a serious health condition covered by the Act or other circumstances beyond the employee's control. An employee must return to work for at least 30 days to be protected under this provision.

Source: Women Employed, *Facts About the Family and Medical Leave Act*



Question 72 What agency enforces the FMLA?

Answer The FMLA is enforced by the U.S. Department of Labor Wage and Hour Division.

Source: Women Employed, *Facts About the Family and Medical Leave Act*

Women in Education



Question 73 What laws guarantee women's and girls' equal access to education?

Answer Title IX of the Educational Amendments, passed in 1972, is the primary law ensuring equality in public education. The law provides that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Title IX applies to public and private schools that receive federal financial assistance, from kindergarten through graduate schools. It outlaws discrimination based on gender in the areas of admissions, recruitment, course offerings and access, counseling, educational programs and access, employment assistance, financial aid, facilities and housing, health and insurance benefits and services, scholarships and athletics. Title IX prohibits discriminatory practices such as sexual harassment and disparate treatment of students, faculty or employees based on marital or parental status. The equal protection clause of the Fourteenth Amendment of the Constitution also applies to public schools and institutions of higher learning.

Sources: 20 U.S.C. Section 1681; Valentin, Iram, *Title IX: A Brief History*, Women Educational Equity Act Publishing Center, *Title IX Digest*; WEEA Publishing Center, *Gender Equity for Educators, Parents and Community*, 1995



Question 74 Does Title IX apply to all departments of an educational institution?

Answer In 1984, the U.S. Supreme Court in *Grove City College v. Bell* ruled that Title IX applied to only those programs that directly received federal funding. The Civil Rights Restoration Act, passed by Congress in 1988, however, expanded the definition of "program" broadly enough to make Title IX applicable to the entire institution.

Source: 29 U.S.C. Section 794; WEEA Digest: "Title IX: A Brief History"



Question 75 What impact has Title IX had upon education in America?

Answer In the 26 years that it has been in effect, Title IX has dramatically altered the educational landscape in America.

Before Title IX:

Many schools and universities had separate entrances for male and female students.

Female students were not allowed to take certain courses, such as auto mechanics or criminal justice; male students could not take home economics.

Most medical and law schools limited the number of women admitted to 15 or fewer per school.

Female teachers frequently were required to resign from their jobs or take unpaid leave when they were pregnant.

Many colleges and universities required women to have higher test scores and better grades than male applicants to gain admission.

Women living on campus were not allowed to stay out past midnight, or were required to live on campus while men were permitted to live elsewhere.

Women faculty members were excluded from faculty clubs and encouraged to join faculty wives' clubs instead.

After winning two gold medals in the 1964 Olympics, swimmer Donna de Varona could not obtain a college swimming scholarship — they did not exist for women.

After Title IX:

The number of female high school graduates who went on to college grew from 43 percent in 1973 to 63 percent in 1994. Women now make up the majority of college and university students and recipients of master's degrees.

In 1971, 18 percent of young women and 26 percent of young men had completed four years or more of college; in 1994, 27 percent of both men and women earned bachelor's degrees.

The number of women receiving medical degrees grew from nine percent in 1972 to 38 percent in 1994.

The number of women earning law degrees grew six-fold, from seven percent in 1972 to 43 percent in 1994. Female doctoral recipients grew from 25 percent in 1977 to 44 percent in 1994.

Today, more than 100,000 women participate in intercollegiate athletics, a four-fold increase from 1971.

The number of high school girls participating in athletics grew from 300,000 in 1971 (7.5 percent) to 2.4 million in 1996 (39 percent).

From 1980-90, the dropout rate for pregnant students declined 30 percent.



Question 76 Do women and girls still experience discrimination in education?

Answer A 1992 study by the American Association of University Women found that gender bias was a major problem at all levels of school. On the primary and secondary levels, for example, the study reported that girls received significantly less attention from teachers than did boys, that sexual harassment of girls by boys was on the rise, that textbooks and school curricula were largely silent on the contributions of girls and women, and that high school girls lag behind boys in science and math, even though they enter school with roughly the same abilities. Sexual harassment is also a serious concern, with 81 percent of 8th–11th graders surveyed reporting that they had experienced sexual harassment.

At the collegiate level, women continue to be underrepresented in non-traditional fields — such as engineering, computer science, mathematics and physics — that lead to higher paying jobs. This disparity is even greater at the doctoral level. In addition, some scholarships are

still reserved for male students, and there is wide disparity in athletic scholarships for men and women. Sexual harassment is also a significant problem for women college students. While there has never been a comprehensive national survey on sexual harassment in colleges and universities, most individual school surveys report that 20 to 30 percent of female undergraduates and 30 to 40 percent of female graduate students report being sexually harassed. Twenty to 50 percent of women faculty members report being sexual harassed by another faculty member or college administrator.

Women faculty also continue to experience gender bias. Women comprise only 17 percent of full professors, and earn 87 percent of the salaries their male colleagues receive. Research indicates that women faculty are evaluated more harshly by their colleagues and students than male faculty. Women head only 13 percent of colleges and universities.

Sources: American Association of University Women, *How Schools Shortchange Girls*, 1992; *Title IX at 25: Report Card on Gender Equity*, June 23, 1997; Sandler, Dr. Bernice, senior scholar in residence, National Association for Women in Education



Question 77 What legal remedies are available to women who experience discrimination in educational institutions?

Answer Female students and employees may exercise a private right of action against educational institutions that intentionally discriminate, and may sue for equitable relief and civil money damages. Unlike sex discrimination cases against employers, where complaints must first be filed with a federal administrative agency — the EEOC — plaintiffs alleging Title IX violations may file their cases directly in court. They can also file complaints with the U.S. Department of Education Office for Civil Rights, which is charged with enforcing federal civil rights laws in programs that receive federal financial assistance.

Sexual harassment inflicted on a student by a teacher or school employee is one form of discrimination that can form the basis of a Title IX action against an educational institution. School districts can be found liable for money damages only when a school official with the authority to intervene actually knew about the harassment and acted with “deliberate indifference” in failing to stop it. However, even in cases where students could not establish liability for money damages, they could still obtain “equitable relief,” in which the court can order the school to stop or correct discriminatory activity.

The Supreme Court has not ruled on a school district’s liability for student-to-student sexual harassment, although Department of Education guidelines hold schools responsible for such harassment.

Sources: *Cannon v. University of Chicago*, 441 U.S. 677 (1979); *North Haven Board of Education v. Bell*, 456 U.S. 512 (1982); *Franklin v. Gwinnet County Public Schools*, 112 S.Ct. 1028 (1992); *Gebser v. Lago Vista Independent School District*, No. 96-1866 (1998); Vargyas, Ellen J., National Women’s Law Center, *Breaking Down Barriers: A Legal Guide to Title IX*, 1994.



Question 78 What does Title IX require for men's and women's sports programs?

Answer Under Title IX, inter-collegiate athletic programs must not discriminate in the allocation of "participation opportunities," financial aid and athletic benefits and opportunities for student athletes, and may not discriminate in employment.

To determine whether participation opportunities are non-discriminatory, the courts apply a three-prong test. (1) whether women students' participation in sports is "substantially proportionate" to their enrollment at the school; (2) whether the school can demonstrate a history of expanding sports programs for the under-represented sex; or (3) whether it can be demonstrated that the present program accommodates the interests and abilities of the under-represented sex.

Title IX does not require schools to offer a specific sport. It permits sex-integrated teams, but does not require them when selection is based on competitive skills or in contact sports. There is no requirement that men's and women's college sports programs be identical. They may offer different sports for each sex as long as they are administered in a non-discriminatory fashion.

Athletic financial assistance must be awarded to women athletes in proportion to their participation in inter-collegiate sports, and women should receive athletic benefits and opportunities — such as equipment and supplies, per diems, opportunity for coaching, locker rooms and facilities, and housing and dining services — on a par with men. Compliance with rules of the National Collegiate Athletic Association (NCAA) or other association policies is not a legal defense to Title IX discrimination.

Source: Vargyas, Ellen J., National Women's Law Center, *Breaking Down Barriers: A Legal Guide to Title IX*, 1994; Mauro, Tony, *USA Today*, "Sex equity in sports backed," April 22, 1997



Question 79 If Title IX became law in 1972, why were single-sex state supported colleges, such as the Citadel and the Virginia Military Institute, allowed to continue as male-only institutions?

Answer In passing Title IX, Congress specifically exempted schools that were traditionally single sex from its gender discrimination provisions.

Challenges to the men-only admissions policies at state supported schools, therefore, had to have another legal basis. In the case of VMI, the U.S. Department of Justice, after receiving a complaint from a female applicant denied admission on the basis of her gender, sued the Commonwealth of Virginia on the grounds that it violated the equal protection clause of the Fourteenth Amendment by refusing to admit women.

In *U.S. v. Virginia*, decided in June of 1996, the Supreme Court ruled that VMI failed to pass a “skeptical scrutiny test” that required it to demonstrate an “exceedingly pervasive justification” to exclude women from the school, and therefore its men-only policy was found to be unconstitutional.

Following the Supreme Court ruling in the VMI case, the Citadel changed its male-only admissions policy, and admitted women in the fall of 1996. Women were admitted to VMI starting in 1997.

Schools that desire to remain single sex could probably do so by refusing all government funds and becoming a private institution. (The Fourteenth Amendment applies only to action by states, and not private parties.) However, the cost would be prohibitive. One-third of VMI’s operating budget, for example, was funded by the Commonwealth of Virginia.

Women first were admitted into the U.S. military colleges — such as West Point (Army), the U.S. Naval Academy and the U.S. Air Force Academy — in 1975.

Sources: Stephenson, D. Grier Jr., *USA Today Magazine*, “The Future of Single-Sex education: Virginia Military Institute Case,” January 1997; Gleason, Christina, “United States v. Virginia: Skeptical Scrutiny and the Future of Gender Discrimination Law,” *St. John’s Law Review*, Fall 1996



Question 80 Are single-sex public elementary and secondary schools legal?

Answer While not specifically outlawing publicly-financed girls- or boys-only schools, the U.S. Supreme Court in *U.S. v. Virginia* affirmed that single sex schools must prove that the gender classification advances an important governmental objective and that it is directly or closely related to that objective. Whether single-sex schools or programs can pass this “skeptical scrutiny” hurdle has not been decided by the Court.

In response to one person’s complaint in 1992, the Department of Education Office of Civil Rights reviewed schools in Philadelphia and Baltimore designed to meet the special needs of girls, which also admitted boys. No legal action was taken.

Sources: Stephenson, D. Grier Jr., “The Future of Single-Sex Education: Virginia Military Institute Case,” *USA Today Magazine*, January 1997; Tabor, ; Mary B.W., “Planners of New Public Schools for Girls are Studying Two Other Cities,” *New York Times*, July 22, 1996; Henry, Tamara, “Confusion over Single-Sex Classes: Fear of Lawsuits Makes States Leery,” *USA Today*, July 3, 1996

Women and Family Law



Question 81 At what age can a woman marry?

Answer In most states both women and men may marry at 18 without parental consent. Most states also allow persons age 16 and 17 to marry with the consent of their parents or a judge.

Source: American Bar Association, *American Bar Association Family Legal Guide*, 1994

Table 5 / Age Requirements for Marriage

	Age With Parental Consent		Age Without Parental Consent	
	Male	Female	Male	Female
Alabama	14a	14a	18	18
Alaska	16j	16j	18	18
Arizona	16j	16j	18	18
Arkansas	17c	16c	18	18
California	b	b	18	18
Colorado	16j	16j	18	18
Connecticut	16j	16j	18	18
Delaware	18c	16c	18	18
District of Columbia	16a	16a	18	18
Florida	16ac	16ac	18	18
Georgia	b	b	16	16
Hawaii	16d	16d	18	18
Idaho	16j	16j	18	18
Illinois	16	16	18	18
Indiana	17c	17c	18	18
Iowa	18j	18j	18	18
Kansas	18j	18j	18	18
Kentucky	18cj	18cj	18	18
Louisiana	18j	18j	18	18
Maine	16j	16j	18	18
Maryland	16ce	16ce	18	18
Massachusetts	18d	18d	18	18
Michigan	16cd	16c	18	18
Minnesota	16j	16j	18	18
Mississippi	17	15	21	21
Missouri	15d, 18j	15d, 18j	18	18

	Age With Parental Consent		Age Without Parental Consent	
	Male	Female	Male	Female
Montana	16	16	18	18
Nebraska	17	17	18	18
Nevada	16j	16j	18	18
New Hampshire	14g	13g	18	18
New Jersey	16cj	16cj	18	18
New Mexico	16d	16d	18	18
New York	14g	14g	18	18
North Carolina	16cf	16cf	18	18
North Dakota	16	16	18	18
Ohio	18cj	16cj	18	18
Oklahoma	16c	16c	18	18
Oregon	17	17	18	18
Pennsylvania	16d	16d	18	18
Puerto Rico	18cdj	16cdj	21	21
Rhode Island	18d	16d	18	18
South Carolina	16c	14c	18	18
South Dakota	16c	16c	18	18
Tennessee	16d	16d	18	18
Texas	14gh	14gh	18	18
Utah	14	14	18i	18i
Vermont	16j	16j	18	18
Virginia	16ac	16ac	18	18
Washington	17d	17d	18	18
West Virginia	18c	18c	18	18
Wisconsin	16	16	18	18
Wyoming	16d	16d	18	18

- a Parental consent not required if minor was previously married.
- b No age limits.
- c Younger parties may obtain license in case of pregnancy or birth of child.
- d Younger parties may obtain license in special circumstances.
- e If parties are under 16 years of age, proof of age and the consent of parents in person is required. If a parent is ill, an affidavit by the incapacitated parent and a physician's affidavit to that effect required.
- f Unless parties are 18 years of age or more, or female is pregnant, or applicants are the parents of a living child born out of wedlock.

- g Parental consent and/or permission of judge required.
- h Below age of consent parties need parental consent and permission of judge.
- i Authorizes counties to provide for premarital counseling as a requisite to issuance of license to persons under 19 and persons previously divorced.
- j Younger parties may marry with parental consent and/or permission of judge. In Connecticut, judicial approval

Source: Gary L. Skoloff, Skoloff & Wolfe, Livingston, New Jersey



Question 82 May a woman keep her maiden name after marriage?

Answer Yes. A woman's name changes after she marries only if she wants to change it. In the past, many people assumed that a woman would change her last name to her husband's name when she married. Now society recognizes a woman's right to take her husband's name, keep her original name, or use both names. The general rule is that if a woman uses a certain name consistently and honestly, then that is her true name.

Source: American Bar Association, *American Bar Association Family Legal Guide*, 1994



Question 83 May a woman own property in her own right after marriage?

Answer Yes; she is automatically the owner of her separate property. Separate property is property that a spouse owned before the marriage. Separate property also includes inheritances and gifts (except gifts between spouses) acquired during the marriage. During and after the marriage, each spouse may keep control of his or her own separate property, if the property is kept in his or her

own name and is not mixed with property acquired by the couple during the marriage. Each spouse may buy, sell, and borrow money on his or her separate property. Income earned from separate property, such as interest, dividends or rent, is generally classified as separate property. However, in some states that recognize community property, these profits may be regarded as community or marital property.

Source: American Bar Association, *American Bar Association Family Legal Guide*, 1996



Question 84 What are the legal grounds for obtaining a divorce?

Answer The grounds for divorce depend on the state, and may be based on no-fault or fault. A no-fault divorce is available in some form in all 50 states; 31 states also have fault-based grounds as an additional option. A no-fault divorce is one in which neither the husband nor the wife officially blames the other for the breakdown of the marriage. Common bases for a no-fault divorce are "irreconcilable differences," "irretrievable breakdown"

or "incompatibility." Another common basis for no-fault divorce is that the parties have lived separately for a certain period of time, such as six months or a year (varies from state to state) with the intent that the separation be permanent. The list of grounds for a fault-based divorce may include: adultery, physical cruelty, mental cruelty, attempted murder, desertion, habitual drunkenness, use of addictive drugs, insanity, impotency, and infection of one's spouse with venereal disease.

Source: Atkinson, Jeff, *The American Bar Association Guide to Family Law*, 1996

Table 6 / Grounds for Divorce

State	No fault Sole Ground	No fault added to traditional	Incompatibility	Living separate and Apart	Requirements*
Alabama		•	•	2 years	6 months
Alaska		•	•		None
Arizona	•				90 days
Arkansas		•		18 months	60 days
California	•				6 months
Colorado	•				90 days
Connecticut		•		18 months	1 year
Delaware	•				6 months
District of Columbia	•			1 year	6 months
Florida	•				6 months
Georgia		•			6 months
Hawaii	•			2 years	6 months
Idaho		•			6 weeks
Illinois		•		2 years	90 days
Indiana		•			60 days
Iowa	•				None
Kansas			•		60 days
Kentucky	•				180 days
Louisiana		•		6 months	None
Maine		•			6 months
Maryland		•		2 years	1 year
Massachusetts		•			None
Michigan	•				6 months
Minnesota	•				180 days
Mississippi		•			6 months
Missouri		•		1–2 years	90 days
Montana	•		•	180 days	90 days
Nebraska	•				1 year
Nevada			•	1 year	6 weeks
New Hampshire		•		2 years	1 year
New Jersey		•		18 months	1 year
New Mexico		•	•		6 months
New York		•		1 year	1 year
North Carolina				1 year	6 months
North Dakota		•			6 months
Ohio		•	•	1 year	6 months
Oklahoma		•	•		6 months
Oregon	•				6 months
Pennsylvania		•		2 years	6 months
Rhode Island		•		3 years	1 year
South Carolina		•		1 year	3 months**
South Dakota		•			None
Tennessee		•		2 years	6 months
Texas		•		3 years	6 months
Utah		•		3 years	90 days
Vermont		•		6 months	6 months
Virginia		•		1 year	6 months
Washington	•				1 year
West Virginia		•		1 year	1 year
Wisconsin	•				6 months
Wyoming	•		•		60 days

Source: American Bar Association, *Family Law Quarterly*, Winter 1998

* the period necessary to establish residency with each state

** both residents



Question 85 How does a judge determine who gets what in a divorce? How are a “traditional” wife’s contributions to the marriage valued in dividing the marital estate?

Answer Generally, spouses are free to divide their property as they see fit in what is called a “marital settlement agreement,” which is a contract between the husband and the wife that divides property and debts and resolves other issues of the divorce. Although many divorces begin with a high level of acrimony, a substantial majority (95 percent or more) are settled without the need for a judge to decide property or other issues. However, if the division of property cannot be settled, then the court must make the determination. Laws vary from state to state. As a starting point, many states allow both parties to keep their “nonmarital” or “separate” property.

In dividing marital or community property, again the laws vary from state to state. Nine states are community property states — Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin.

Some states, such as California, take a rather simple approach and believe that property should be divided equally and all marital property will be divided fifty-fifty, unless a premarital agreement specifies otherwise.

Most states, however, apply the concept of “equitable distribution,” which means the court divides the marital property as it thinks fair. Under equitable distribution, the courts consider a variety of factors and need not weigh the factors equally. Equitable distribution permits more flexibility and more attention to the financial situation of both spouses. However, equitable distribution also makes the resolution of property issues less predictable. Some of the factors considered in equitable distribution include: the amount of nonmarital property each spouse has, each spouse’s earning power, who earned the property, services as a homemaker, waste and dissipation (also called economic fault), fault (non-economic fault, such as infidelity or abuse), duration of the marriage, and age and health of the parties.

A more “traditional” wife’s contribution to the marriage would be considered under “services as a homemaker.” When applying this factor the court may consider that not only are keeping a house and raising children work, but that in performing those tasks the traditional homemaker spouse may have enabled the wage-earning spouse to have had opportunity to earn more money. Further, courts also consider that a “traditional” wife may have limited her earning capacity by working as a homemaker.

Source: Atkinson, Jeff, *The American Bar Association Guide to Family Law*, 1996

Table 7 / **Property Division**

State	Community property	Only marital divided	Statutory list* of factors	Nonmonetary contributions	Economic misconduct	Contribution to Education
Alabama		•		•		•
Alaska			•	•	•	•
Arizona	•		•		•	•
Arkansas		•	•	•		
California	•		•	•	•	•
Colorado		•	•	•	•	
Connecticut			•	•	•	•
Delaware			•	•	•	
District of Columbia		•	•	•	•	
Florida		•	•	•	•	•
Georgia		•				
Hawaii			•	•	•	
Idaho	•		•			
Illinois		•	•	•	•	
Indiana		•	•	•	•	•
Iowa		•	•	•		
Kansas			•		•	
Kentucky		•	•	•	•	•
Louisiana	•					
Maine		•	•	•	•	
Maryland		•	•	•		
Massachusetts			•	•	•	
Michigan		•		•	•	•
Minnesota		• ¹	•	•	•	
Mississippi		•		•	•	•
Missouri		•	•	•	•	•
Montana			•	•	•	
Nebraska		•		•		
Nevada	•	•		•	•	•
New Hampshire			•	•	•	•
New Jersey		•	•	•	•	•
New Mexico	•					
New York		•	•	•	•	•
North Carolina		•	•	•	•	•
North Dakota				•	•	•
Ohio		•	•	•	•	•
Oklahoma		•		•	•	
Oregon				•	•	•
Pennsylvania		•	•	•	•	•
Rhode Island		•	•	•	•	•
South Carolina		•	•	•	•	•
South Dakota				•	•	
Tennessee		•	•	•	•	•
Texas	•				•	
Utah					•	
Vermont			•	•	•	•
Virginia		•	•	•	•	
Washington	•		•			
West Virginia		•	•	•	•	•
Wisconsin	•	•	•	•	•	•
Wyoming		•	•			

* Can include, for example, age of the parties, duration of marriage, present and future earning potential of the parties, etc., and vary from state to state.

¹ Nonmarital may be invaded up to 50% to prevent unfair hardship.

Source: American Bar Association, *Family Law Quarterly*, Winter 1998



Question 86 What is alimony? Do women still receive alimony after a divorce? Can a woman be ordered to pay a husband alimony?

Answer Alimony, or maintenance, is money paid by one spouse to another for day-to-day support of the spouse with fewer financial resources. At one time the courts commonly ordered husbands to pay support to their former wives until the ex-wife re-married or died. Today, alimony is ordered on the basis of one spouse's need or entitlement and the other spouse's ability to pay. Although most alimony is ordered from the husband to the wife, a woman can be ordered to pay alimony to her former spouse.

There are different types of alimony as well. For example, reimbursement alimony can be ordered where, for example, one spouse put the other spouse through school or a training program and the couple divorces soon afterward. Rehabilitative alimony may be given to one spouse so he or she can acquire necessary education or training so that he or she can ultimately support himself or herself. However, maintenance is awarded less frequently now because there are fewer marriages in which one person is financially dependent on the other. Also, regardless of whether maintenance is ordered or not, parents are financially responsible for their minor children; providing for children from the marriage is handled by awarding child support, which differs from maintenance.

Source: Atkinson, Jeff, *The American Bar Association Guide to Family Law*, 1996



Question 87 Can courts order payment of financial support from a partner even if they weren't legally married?

Answer Not usually. First, such statements as "I'll take care of you" are rarely in writing, and so are difficult for a court to enforce. Further, the lack of specificity in a statement such as that challenges the court to determine what "taking care of" would mean in that context. As with any contract, if someone wants protection, it is best to make the agreement specific and in writing.

Source: Atkinson, Jeff, *The American Bar Association Guide to Family Law*, 1996



Question 88 Does divorce have a different economic impact on women than on men?

Answer Yes, although not as large as some people may think. In 1985 a researcher published a widely-touted work claiming that in the first year after a divorce women suffered a 73 percent drop in their standard of living, while men enjoyed a 42 percent increase in theirs. However, the most recent figures, currently archived at Radcliffe College's Murray Research Center, found a 27 percent decrease in women's post-divorce standard of living, and a 10 percent increase in men's post-divorce standard of living.

Source: Webster, Katharine, Associated Press, "Close-up: Post-Divorce Wealth Gap was Wrong Agrees Author," *The Seattle Times*, May 19, 1996



Question 89 How do courts determine who gets custody of children in a divorce?

Answer If the parents cannot agree on custody of their child, the courts decide custody based on “the best interests of the child.” Determining the child’s best interests involves many factors, no one of which is the most important factor, but consideration is normally given to who is the primary caretaker of the child as well as such issues as the child’s preference, and the environment where the child would live.

Source: Atkinson, Jeff, *The American Bar Association Guide to Family Law*, 1996



Question 90 What is joint custody?

Answer Joint custody has two parts: joint legal custody and joint physical custody. A joint custody order can have one or both parts.

Joint legal custody refers to both parents sharing the major decisions affecting the child, which can include school, health care and religious training. Other considerations under these types of custody agreements can include: extracurricular activities, summer camp, age for dating or getting a job, and methods of discipline.

Joint physical custody refers to the time spent with each parent. The amount of time is flexible, and can range from a moderate period of time for one parent, such as every other weekend, to a child dividing the time equally between the two parents’ homes. In situations where the time spent with both parents will be divided equally, it helps if the parents live close to one another. Some parents have gone so far as to keep the child in one home, while the parents take turns staying in the home with the child.

Source: Atkinson, Jeff, *The American Bar Association Guide to Family Law*, 1996



Question 91 How do courts determine levels of child support?

Answer Under federal law, all states must have guidelines by which courts determine child support. The guidelines were established because variations in the amounts of support set in similar cases were too wide. The guidelines are formulas that consider the income of the parties, the number of children and other factors.

Source: American Bar Association, *The American Bar Association Family Legal Guide*, 1994



Question 92 Is child support always paid?

Answer No. For example, the most recent census data show that of the total \$17.7 billion owed for child support in 1991, \$5.8 billion was not paid. Among those due support payments, about half received the full amount, about one quarter received partial payment, and the remaining one quarter received nothing.

Source: Administration for Children and Families, Office of Child Support Enforcement, Child Support Enforcement Program, Feb. 1998



Question 93 What is being done to increase child support collection rates?

Answer The Child Support Enforcement (CSE) Program, established in 1975 with the passage of Title IV-D of the Social Security Act, was designed with the goal of ensuring that children are financially supported by both their parents. The CSE program provides four major services to facilitate the process of collecting child support: locating noncustodial parents, establishing paternity, establishing child support obligations, and enforcing child support orders.

A parent can be required to pay child support through income withholding. The welfare reform legislation signed in 1996 established state and federal registries of

newly hired employees to speed the transfer of wage withholding orders. In the first eight months of the program, 700,000 “deadbeat” parents were tracked down through this system. Overdue child support can be collected from federal and state income tax refunds, liens can be put on property, and the property itself can be sold with the proceeds used to pay child support arrearages. Further, unpaid child support should be reported automatically to credit reporting bureaus, and drivers, professional, occupational and recreational licenses can be suspended if the obligated parent is not paying support as required.

Source: Administration for Children and Families, Office of Child Support Enforcement, Child Support Enforcement Program, Feb. 1998; Chicago Sun-Times, *Law helps U.S. track down 700,000 'deadbeat dads'*; Scripps Howard News Service, June 21, 1998

Women and Criminal Justice

Question 94 How often are women the victims of violent crime?

Answer In 1994, females ages 12 and older experienced nearly 5 million violent victimizations; men were victimized 6.2 million times.

There was one rape for every 270 women, 1 robbery for every 240 women, 1 assault for every 29 women, and

1 murder for every 23,000 women. Total violent crimes against women were:

- 432,000 rapes and sexual assaults
- 472,000 robberies
- More than 940,000 aggravated assaults
- More than 3 million simple assaults
- 4,489 homicides

Source: U.S. Department of Justice, Bureau of Justice Statistics, Female Victims of Violent Crime (NCJ-162602)

Question 95 How does the rate of violent crime against women compare to that against men?

Answer The rate of violent crime against men exceeded women in all categories except for rape and sexual assault. The 1994 rates per 1,000 people 12 years and older were as follows:

Table 8 / Rates of Violent Victimization by Sex
(per 1,000)

	Female	Male
All crimes of violence	43	60
Rape and sexual assault	4	0.2
Robbery	4	8
Assault	35	51
aggravated assault	8	15
simple assault	27	36
Homicide	0.04	0.18

Source: U.S. Department of Justice, Bureau of Justice Statistics, Female Victims of Violent Crime (NCJ-162602)

Question 96 What are some of the characteristics of violent crime against women?

Answer Generally, women are less likely than men to be a victim of violent crime; however, when women are victims, their attacker is likely to be someone they know, rather than a stranger, and the attack is likely to occur in a private home.

• From 1973-94, the violent victimization rates of women and men converged. In 1975, women were half as likely as men to be the victim of a violent crime; in 1994, they were two-thirds as likely.

- In 1994, men experienced 6.6 million victimizations, women 5 million.
- Women are at less risk than men of homicide in general.
- Nine out of every 10 female murder victims were killed by men.
- Women are at higher risk than men to be victimized by an intimate. Females are twice as likely to have been killed by husbands or boyfriends than male victims are to have been killed by wives or girlfriends.
- Females experienced seven times as many incidents of non-fatal violence by an intimate as did males.

- Women are more likely to be victimized by someone they know (62% of victimizations) than by a stranger. For men, the reverse is true — 63% of victimizations are committed by a stranger.
- Female victims of violence by an intimate were more often injured by the violence than women victimized by a stranger.
- About half the incidents of intimate violence are reported to the police; the most common reasons given by victims for not contacting the police were that they considered the incident a private matter, they feared retaliation, or they felt the police would not be able to do anything about the incident.
- More than two-thirds of the rapes and sexual assaults measured by the National Crime Victimization Survey (conducted by the U.S. Department of Justice Bureau of Justice Statistics in conjunction with the Bureau of the Census) went unreported to law enforcement.

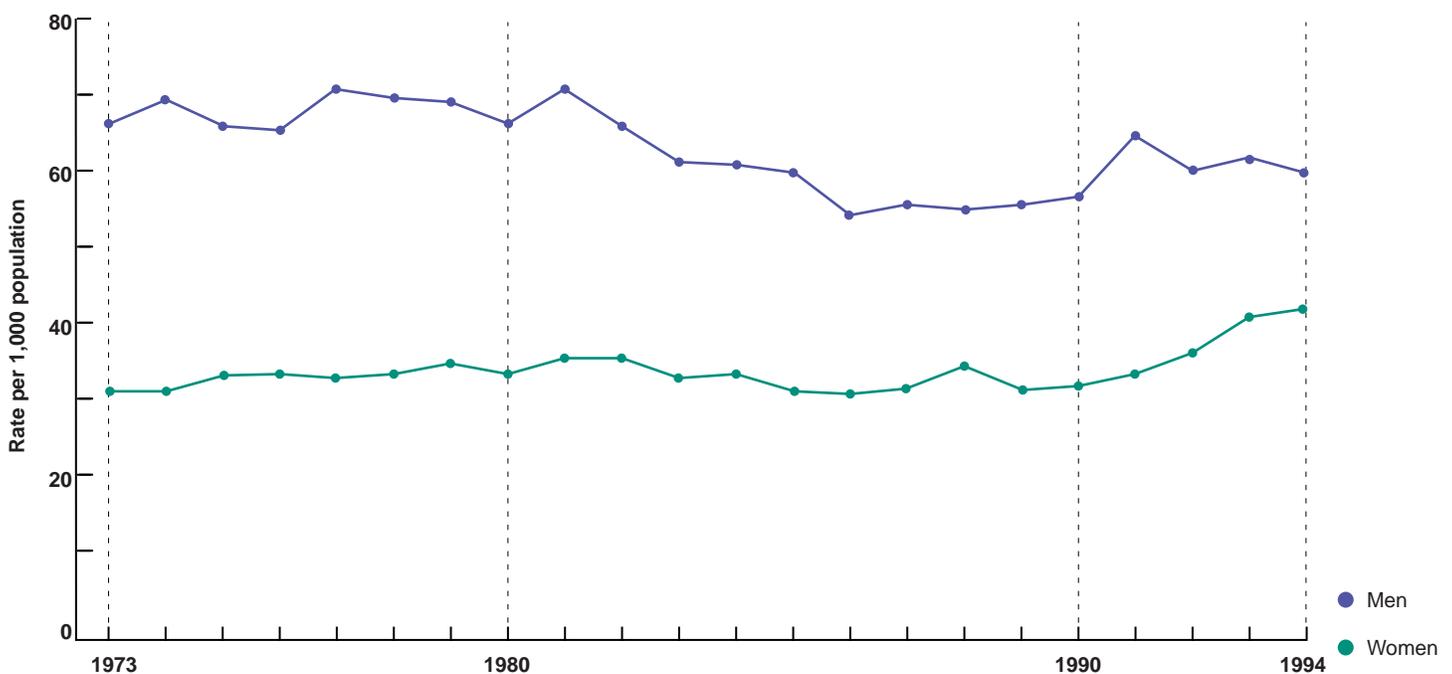
Sources: U.S. Department of Justice, Bureau of Justice Statistics, Sex Differences in Violent Victimization, September 1997 (NCJ-164508); Female Victims of Violent Crime, December 1996 (NCJ-162602); Criminal Victimization 1994, April 1996 (NCJ-158022); Violence Against Women: Estimates from the Redesigned Survey, August 1995, (NCJ-154348); Violence Between Intimates, November 1994 (NCJ-149259)

U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States, Uniform Crime Reports, 1993-95.

Table 9 / Rates of Violent Crimes
(including murders, rapes, robberies and assaults)
per 1,000 population

Year	Men	Women
1973	67.83	31.35
1974	69.26	31.25
1975	66.67	33.10
1976	65.62	33.25
1977	70.92	32.31
1978	69.84	32.74
1979	69.58	35.28
1980	67.90	32.97
1981	70.75	36.44
1982	66.80	36.84
1983	61.58	32.40
1984	60.49	33.39
1985	59.34	31.56
1986	54.14	30.84
1987	56.70	31.91
1988	54.91	34.34
1989	56.61	31.37
1990	57.42	31.91
1991	64.31	33.39
1992	59.16	37.13
1993	60.60	40.81
1994	59.42	41.48

Graph 13 / Rates of Violent Crimes
(including murders, rapes, robberies and assaults)
per 1,000 population



Sources: U.S. Department of Justice, Bureau of Justice Statistics, National Crime Survey, 1973-92 and National Criminal Victimization Survey, 1992-94, for rape, robbery, and assault, FBI, Uniform Crime Reports data for homicides



Question 97 What is rape? How does the justice system deal with sexual assault against women?

Answer Under common law, rape has been defined as unlawful sexual contact with a victim by force and without her consent. To establish a charge of rape, most jurisdictions have required that the victim's testimony with respect to the three elements of the crime — force and lack of consent, penetration, and identity of the perpetrator — be corroborated.

Until recent years, laws required extraordinary proof that the woman did not consent to the assault and often demanded corroboration of her testimony by a second party. Except in cases where the perpetrator used deadly

force against the victim, she was expected to prove that she used every means possible of resisting the assault. Evidence of a victim's past sexual history could be introduced to diminish her credibility and establish consent.

In the mid-1970s, women's and victims' rights groups began to press successfully for changes in rape laws. Across the country, statutes were enacted to broaden the definition of rape and to scale back the requirement of corroboration of victim testimony. Rape "shield laws," which limit the introduction of evidence of a victim's past sexual experience as proof of consent or to impeach her credibility, were also enacted in many states.

Sources: Brownmiller, Susan, "Against Our Will: Men, Women, and Rape," 1975; Dusky, Lorraine, "Still Unequal: The Shameful Truth About Women and Justice in America," 1997; Fairstein, Linda, "Sexual Violence: Our War Against Rape," 1993



Question 98 What is "date rape"?

Answer Traditionally, it was nearly impossible to prove that a victim did not consent to sexual activity when she and the defendant were not strangers, where the victim had socialized with the defendant, or especially if she had consented to some sexual contact. Prosecutors were usually unwilling to pursue a rape claim in these circumstances.

The terms "date rape" or "acquaintance rape" describe sexual assault in situations where the attacker is not unknown to the victim. While it can be more difficult to obtain a conviction in a date rape, law enforcement agencies are employing innovative techniques to improve investigation of these cases, and more date rapes cases are now being tried successfully.

Sources: Brownmiller, Susan, "Against Our Will: Men, Women, and Rape," 1975; Dusky, Lorraine, "Still Unequal: The Shameful Truth About Women and Justice in America," 1997; Fairstein, Linda, "Sexual Violence: Our War Against Rape," 1993



Question 99 What is “spousal rape”?

Answer Under English common law, a man could not be charged with rape of his wife, because rape was defined as illegal sexual contact, and sexual activity between husband and wife was lawful. In 1975, South Dakota became the first state to abolish a blanket spousal exception to rape. As of 1993, every state and the District

of Columbia had eliminated the marital exception, making it possible for one spouse to press rape charges against the other.

However, many states statutes still require a significantly higher level of force to be used against the victim when the perpetrator is a spouse for a charge of rape to be sustained.

Sources: Brownmiller, Susan, “Against Our Will: Men, Women, and Rape,” 1975; Dusky, Lorraine, “Still Unequal: The Shameful Truth About Women and Justice in America,” 1997; Fairstein, Linda, “Sexual Violence: Our War Against Rape,” 1993



Question 100 What measures are being taken to increase the legal system’s sensitivity to victims of sexual assault?

Answer In many states, a victims’ advocate, often a rape survivor herself, will be assigned to assist victims. The advocate may accompany the victim to the hospital for medical examinations, help her work with police and prosecutors throughout the investigation and trial, and will inform her about community resources available to crime victims. Many states have also enacted crime restitution and victims’ rights laws. Victim rights statutes, which cover not just rape but other criminal offenses, often require states to keep victims informed about the status of their case and the dates of important legal pro-

ceedings and may allow them to deliver “victim impact” statements at the defendant’s sentencing.

As a condition of receiving federal funding under the Violence Against Women Act, states must certify that they do not require victims to pay for their medical exams following a sexual assault (in some jurisdiction, victims were required to pay up to \$600 for medical treatment and exams to provide evidence of rape).

Many states have passed legislation requiring convicted child molesters and/or sex offenders such as rapists to register with local law enforcement agencies when they change addresses; law enforcement agencies are then often required to notify citizens living near the sex offender’s residence.

Source: U.S. Department of Justice Violence Against Women Office, *The Violence Against Women Act: Breaking the Cycle of Violence*, 1996



Question 101 What is domestic violence?

Answer Domestic violence is a pattern of behavior used by one intimate partner or spouse to control the other. A domestic violence abuser may be physically violent, and may also use coercion, threats, intimidation, or isolation to control the victim. Abusers may be emotionally or sexually abusive, and may frequently try to control their partners or spouses by controlling family finances.

Dr. Mary Ann Dutton, a member of the American Psychological Association’s Presidential Task Force on Violence and the Family, a member of the American Bar Association Commission on Domestic Violence, and nationally prominent clinical psychologist, defines domestic violence as a pattern of interaction in which one intimate partner uses threats or abuse to force the other intimate partner to change his or her behavior. Linda Fairstein, who heads the Sex Crimes Unit in the Manhattan District Attorney’s Office, adds that some abusers assault their partners for no other reason than to inflict pain and suffering and/or humiliation.



Question 102 How often does domestic violence occur?

Answer By the most conservative estimate, 1 million women each year suffer nonfatal violence by an intimate. Other surveys estimate up to 4 million American women each year experience a serious assault by a partner, and nearly one in three adult women experience at least one physical assault by a partner during adulthood.

Sources: U.S. Department of Justice, Bureau of Justice Statistics, Violence Against Women: Estimates from the Redesigned Survey, August 1995 (NCJ-154348); American Psychological Association, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996)



Question 103 Does domestic violence occur primarily in low-income families?

Answer Domestic violence affects people from every ethnic, racial, age, national origin, religious and socio-economic background. Studies have shown that the only common trait among victims is that they are being abused by their intimate partners or spouses, and that

the majority of heterosexual victims are female. Neither victims nor perpetrators can be identified as a certain “type” or “profile.” Abusers may appear charming and articulate in public, or they may be seething with rage; victims are just as likely to seem angry or aggressive as frightened or passive.

Sources: U.S. Department of Justice, Bureau of Justice Statistics, Violence Against Women: Estimates from the Redesigned Survey, August 1995 (NCJ-154348); Adams, David, *Identifying the Assaultive Husband in Court: You be the Judge*, Boston Bar Journal, July-August 1989



Question 104 Why don't victims of domestic violence just leave their abusers?

Answer Most victims do leave their abusers, often several times. It may take a number of attempts to permanently separate, because abusers use violence, financial control or threats about the children, to compel victims to return. Lack of support from friends, family members or professionals, such as court personnel, law enforcement, counselors or clergy, may cause victims to return.

In addition, the risk of further violence often increases after victims separate from their abusers. According to the Department of Justice, women separated from their husbands were three times more likely to be victimized by spouses than divorced women, and 25 times more likely than married women. Another study found that 65 percent of intimate homicide victims had physically separated from the perpetrator prior to their death.

Source: U.S. Department of Justice, Bureau of Justice Statistics Special Report: *Violence Against Women: Estimates from the Redesigned Survey* (NCJ-154348), August 1995; Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project; 1997; American Bar Association Commission on Domestic Violence, *The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook*, 1996.



Question 105 Are law enforcement and judicial responses — arresting batterers or issuing civil protective orders — effective in stopping domestic violence?

Answer A strong criminal justice response sends a clear message that offenders will be held accountable for their actions. Because some victims are afraid or reluctant to press charges against their abuser, some law enforcement authorities have implemented pro-arrest policies in domestic violence situations, and will prosecute cases even without the cooperation of victims.

Civil protection orders evolved as a useful tool for helping victims of domestic violence in the 1970s, when domestic violence cases were rarely criminally prosecuted. By opening up this option in civil court, communities gave victims the opportunity to petition for safety protections on their own behalf, rather than finding themselves left with no remedies at all if local prosecutors decided not to go forward with their cases. Such orders typically bar abusers from having any contact with their victims or from coming within a certain geographical distance of her. Civil protection orders, which are generally issued by a family court judge, may also make temporary provisions for child support, custody and visitation, in order to reduce the need for the victim to have to negotiate such issues with the abuser.

Because civil protection orders are issued in family court, sanctions for violations are often limited to warnings or fines for contempt. Some jurisdictions, like the District of Columbia, treat the violation of a civil protection order as a form of criminal contempt, and the abuser may face jail time as a result of a violation. In other jurisdictions, like Maryland, the violation of a protection order may be treated as a misdemeanor, and if the abuser is found guilty, criminal punishments will apply. The federal Violence Against Women Act of 1994 contains a “full faith and credit” provision that requires all states and territories to enforce protection orders issued by sister jurisdictions.

Most experts agree, that the actions by one piece of the system are only effective when the rest of the criminal and civil justice systems are functioning, and that improved protocols can decrease domestic violence related homicides. Law enforcement officers must make arrests, prosecutors must prosecute domestic violence cases, and courts must enforce orders and impose sanctions for criminal convictions.

Sources: Buzawa, Eve S. and Carl G., eds., *Do Arrest and Restraining Orders Work?* (1996); Sherman, Lawrence W. & Berk, Richard A., *The Minneapolis Domestic Violence Experience*, Police Foundation Reports 1 (April 1984); Zorza, Joan, *Must We Stop Arresting Batterers? Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 *New Eng. L. Rev.* 929 (1994); Keilitz, Susan L., Courtenay Davis, Hillery S. Efke, Carol Flango, and Paula L. Hannaford, National Center for State Courts, *Civil Protection Orders: Victims' Views on Effectiveness*



Question 106 Can men be the victims of domestic violence?

Answer Domestic abuse can be inflicted by women on their male partners. It also occurs between homosexual couples at the same rate as among heterosexuals. However, 90 to 95 percent of victims of severe domestic violence are women. Most female violence is committed in self-defense, and inflicts less injury than male violence. Also, male perpetrators are four times more likely to use lethal violence than females.

Sources: U.S. Department of Justice, Bureau of Justice Statistics, *Violence Between Intimates* (NCJ-149259); National Resource Council and Institute of Medicine, p. 42, *Violence in Families: Assessing Prevention & Treatment Programs*, Chalk & King, eds., (1998); Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p. 44, table 7.



Question 107 What is the Violence Against Women Act? What is it doing to help stop domestic violence?

Answer The Violence Against Women Act (VAWA) was signed into law on September 13, 1994. A landmark in federal legislation, VAWA created new federal crimes of interstate domestic violence, as well as requiring all states to give “full faith and credit” (honor) to sister states’ protection orders. Additionally, VAWA provided new protections for battered immigrant women and created a new civil rights remedy for victims of gender bias crime.

One of the act’s provisions prohibits an individual who is the subject of an outstanding protection order from possessing or purchasing a firearm. VAWA also authorized several important research programs which looked into causes and effects of violence against women. VAWA created grant programs to enable the states to offer training and technical assistance to all enforcement personnel and prosecutors on issues relating to domestic violence, as well as grants to improve law enforcement responses to actual incidents of domestic violence. VAWA, which resulted from a bi-partisan congressional effort and which had more than 100 sponsors, has dramatically changed the landscape of community responses to domestic violence across the country.

Since VAWA was implemented, jurisdictions in every state and territory and the District of Columbia have established comprehensive training programs for justice

system personnel. Many court systems, such as the District of Columbia and New York City, have developed specialized courts to handle domestic violence cases. Some, like the courts in Dade County, Fla., have concurrent civil and criminal jurisdiction, allowing one judge to handle all of the issues that might arise in a domestic violence case: protection orders, misdemeanor and felony assault charges, custody and child support issues, and marriage dissolutions. VAWA funding has helped many cities and counties to develop special domestic violence programs in their police departments and prosecutors’ offices. Some states, such as Florida, have been able to use VAWA funding to evaluate the effectiveness of their justice system in responding to domestic violence.

As a result of VAWA, more criminal justice system personnel know more about domestic violence than they did in the past and are using this new knowledge to improve victim safety and to hold offenders accountable. VAWA funding, which is administered by the states, has encouraged communities to work in collaborative ways to respond to domestic violence. Victim advocates, police officers, judges, prosecutors, public defenders and court personnel in many cities and counties now sit together at the same table, finding new ways to make the system better.

Source: American Bar Association Commission on Domestic Violence, ABA Center for Pro Bono and ABA Center for Continuing Legal Education, *Stopping Domestic Violence Against Women: Using the New Federal Law*, 1996



Question 108 How does the legal system treat women who kill their abusers? What is “battered woman syndrome”?

Answer Women charged in the death of a mate have the least extensive criminal records of any people convicted, but when convicted of these killings are frequently sentenced to longer prison terms than are men.

Traditionally, temporary insanity was the defense used by women who killed their abusers. However, if this defense was successful and the victim was found not guilty due to insanity, she would then be committed to a mental institution. Self-defense was another defense proffered in these circumstances. Most statutes require a defendant to be in imminent danger and to attempt to retreat before a self-defense claim to be sustained, however, so killing an abuser while he is asleep, for example, would not qualify as self-defense.

A growing number of jurisdictions are allowing expert testimony on domestic violence and the behavior

of abuse victims, “battered woman syndrome,” to be admitted to help a jury evaluate the reasonableness of the defendant’s belief that she was in imminent danger and understand why she did not simply leave her abuser.

“Battered woman syndrome” is not a psychological disorder, however; nor is it a psychological or legal finding that a battered woman has diminished mental capacity. It is a theory to explain how or why a battered woman would act in self defense. “Battered woman syndrome” should not be confused with the fact that many battered women, like other victims of violent crime, may have stress-related responses to being victimized. They may suffer from post-traumatic stress disorder, for example, a condition triggered by the actions of the abuser and not the result of any inherent psychological weakness on the part of the victim.

Source: Browne, Angela, *When Battered Women Kill*, New York, The Free Press, 1987



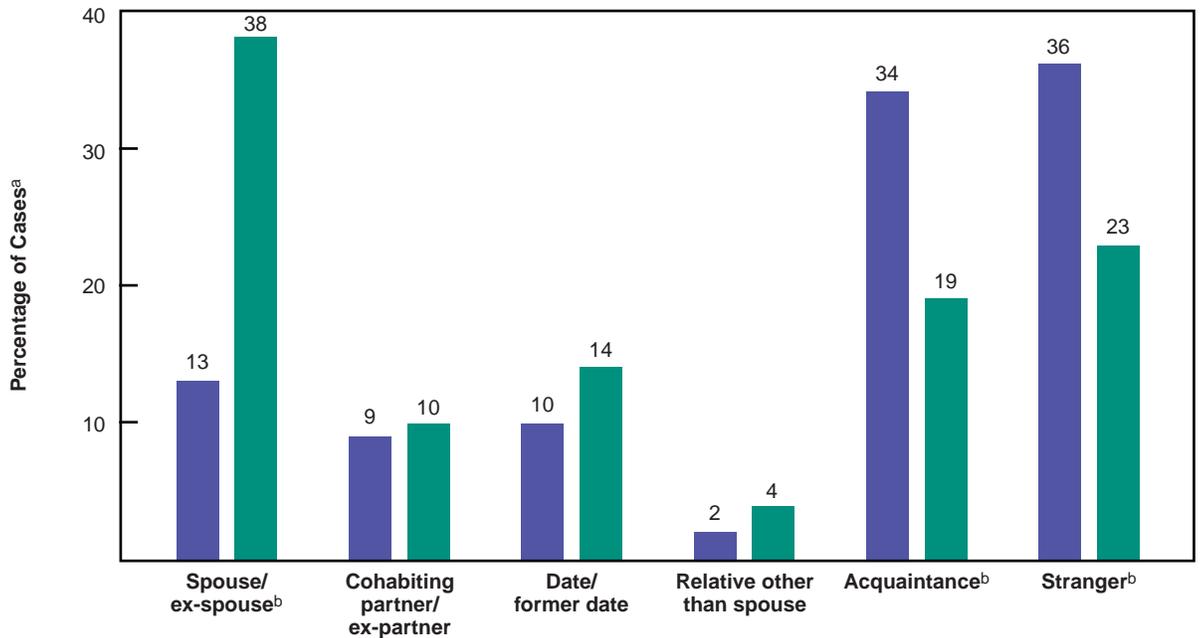
Question 109 What is stalking?

Answer Stalking generally refers to repeated harassing or threatening behavior that may or may not be accompanied by a credible threat of serious harm and may or may not lead to an assault or murder. Repeatedly following, watching or “staking out” a person, making phone calls, leaving written messages or objects, or vandalizing a victim’s property may constitute stalking. All 50 states and the District of Columbia have enacted stalking laws over the past decade.

- Although stalking is a gender-neutral crime, 78 percent of stalking victims were women; 87 percent of stalkers identified by victims were men.
- Only 23 percent of female and 36 percent of male victims were stalked by strangers.
- There is a strong link between stalking and domestic violence. Eighty-one percent of women who were stalked by a current or former husband or co-habiting partner were also physically assaulted by that partner, and 31 percent were sexually assaulted by the partner.
- About half of all victims report stalking to police; a quarter of those cases result in an arrest.

Sources: Thomas, Kenneth, *How to Stop the Stalker: State Anti-Stalking Laws*, Criminal Law Bulletin, 29 (2) 1992, pp. 124-136; Hunzeker, Donna, *Stalking Laws*, National Conference of State Legislatures, State Legislative Report, Denver, Colo., 17(19), pp. 1-6, October 1992; Tjaden, Patricia and Nancy Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, a national telephone survey of 8,000 women and 8,000 men co-sponsored by the National Institute of Justice and the Centers for Disease Control and Prevention, conducted by the Center for Policy Research.

Graph 14 / Relationship Between Victim and Stalker

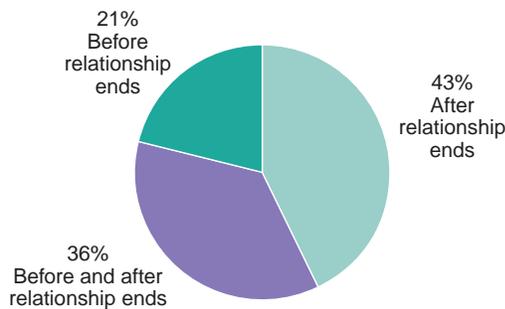


a. Percentages exceed 100% because some victims had more than one stalker.
 b. Differences between males and females are significant at $\leq .05$

■ Male victims (N=179)
 ■ Women victims (N=650)

Source: U.S. Department of Justice, Bureau of Justice Statistics, *Sex Differences in Violent Victimization, 1994*

Graph 15 / Point in Relationship When Women are Stalked



Source: U.S. Department of Justice, Bureau of Justice Statistics, *Sex Differences in Violent Victimization, 1994*



Question 110 Does domestic violence have an impact on the workplace?

Answer Domestic violence is becoming an issue of increasing importance to employers. The workplace is the one location where abusers know they can find their victim. As a result, growing numbers of corporations are developing programs and policies to help employees who are experiencing domestic violence, and adopting security measures to reduce on-premises violence.

- Domestic violence contributes to nearly one of five workplace fatalities.

- Seventy percent of domestic violence victims are employed, and more than 70 percent of victims report that abusers have harassed them at work, either over the telephone or in person.
- Husbands and boyfriends commit 13,000 acts of violence against women in the workplace every year.
- Each year, medical expenses from domestic violence total at least \$3 to \$5 billion. Businesses forfeit another \$100 million in lost wages, sick leave, absenteeism and non-productivity.

Sources: U.S. Department of Labor, Bureau of Labor Statistics, National Census of Fatal Occupational Injuries, August 3, 1995; Stanley, Connie, *Domestic Violence: An Occupational Impact Study*; Domestic Violence Services, Inc., Tulsa, Okla., 1992; Colorado Domestic Violence Coalition, *Domestic Violence for Health Care Providers*, 3rd Edition, 1991.



Question 111 How do crimes by women compare to those perpetrated by men?

Answer Although women comprise more than one-half the American population, they commit fewer crimes than men. Only 15 percent of those arrested for violent crime (murder and non-negligent manslaughter, forcible rape, robbery and aggravated assault), are women. Nearly 28 percent of those arrested for property offenses are women.

Source: U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States*, 1996, 1997, p. 231.



Question 112 How many women are incarcerated? How do they differ from male inmates?

Answer The state prison population grew 58 percent between 1986 and 1991; during that time, the number of women in prison increased 75 percent, from 22,777 to 39,917, while the number of male inmates increased 53 percent, from 464,603 to 728,246.

Female inmates largely resemble male prisoners in terms of race, ethnic background and age. However, women are substantially more likely than men to be serving time for a drug offense and less likely to have been sentenced for a violent crime.

Also:

- Female inmates generally had not been sentenced to incarceration or probation as often as male inmates, and their record of past convictions was generally less violent than that of male inmates. Four in 10 women inmates had a history of violence, compared to more than 6 in 10 men.
- Nearly half of all women in prison were currently serving a sentence for a nonviolent offense and had only nonviolent offenses for prior convictions.
- Most female state prison inmates were over the age of 30, at least high school graduates or holders of GED, and members of a racial or ethnic minority.

- More than 40 percent of women in prison report that they had been abused prior to their admission to prison; 50 percent of women who reported abuse said they had experienced it at the hands of an intimate. More than three-quarters of the female inmates who had a history of abuse reported being sexually abused.
- More than three-quarters of all women in prison had children, and two-thirds had children under the age of 18. The 25,714 mothers in prison had more than 56,000 children. Ninety percent of women had contact with their children. Ten percent of the women reported that their children were in a foster home, agency or institution.
- About 6 percent of women had entered prison pregnant.
- Women in prison used more drugs and used them more frequently than men. About 54 percent of women had used drugs in the month before the current offense, compared to 50 percent of men. Nearly one in four female inmates reported committing their offense to get money to buy drugs, compared to one in six males.
- Females inmates had shorter criminal records. An estimated 51 percent of all women in prison had one or no prior offenses.

Source: U.S. Department of Justice, Bureau of Justice Statistics, Survey of Inmates of State Correctional Facilities, 1991



Question 113 Is the death penalty imposed against women?

Answer The February 3, 1998, execution of Karla Faye Tucker in Texas focused national attention on the death penalty and its imposition against women. Since then, at least one other woman, Judias V. Buenoano in Florida on March 30, 1998, has been executed.

- Actual execution of female offenders is quite rare, with only 533 documented instances in America beginning with the first in 1632.

- Women account for only 13 percent of all murder arrests (the most common capital crime), and for only one in 53 death sentences imposed at the trial level. Women account for only one in 79 persons presently on death row, and for only 3 of 4,652 persons actually executed in the modern era. Since 1900, only one-half of one percent (41 out of 7,729) of all 20th Century executions have been of women.
- Currently, there are 43 women on death row. Their ages range from 21 to 78.

Source: Victor L. Streib, *Death Penalty for Female Offenders January 1, 1973 to the Present*, Ohio North University, Claude W. Petit College of Law, June 3, 1998.

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American Bar Association

Commission on Domestic Violence

202-662-1737

<http://www.abanet.org/domviol/home.html/>

Commission on Women in the Profession

312-988-5715

<http://www.abanet.org/women/>

Bureau of Justice Statistics Clearinghouse, 1-800-732-3277;

or <http://www.ojp.usdoj.gov/bjs/>; or<gopher://www.ojp.usdoj.gov:70/11/bjs/>Catalyst: <http://www.catalystwomen.org/>Federal Statistics: <http://www.fedstats.gov/>

Institute for Women's Policy Research:

<http://www.iwpr.org/>

Internet Resources for Women's Legal and Public Policy

Information: http://www.clearinghouse.net/cgi-bin/chadmin/viewitem/Social_Sciences/

Mapping the Glass Ceiling:

<gopher://gopher.cyberwerks.com/>National Organization for Women: <http://www.now.org/>

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Business Ownership:<http://www.sbaonline.sba.gov/womeninbusiness/>

Social Statistics Briefing Room:

<http://www.whitehouse.gov/fsbr/ssbr.html/>U.S. Department of Justice: <http://www.doj.gov/>

U.S. Department of Labor Women's Bureau:

<http://www.dol.gov/dol/wb/>

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