

Gender Discrimination at Work

As a recent university graduate, Cao Ju had loans to pay.¹ When the twenty-one-year-old saw a job posting for an executive assistant position at a tutoring company in Beijing, she was eager to apply and believed she met all the requirements. But when she didn't hear back after submitting her application online, Cao revisited the job posting and noticed a critical change: citing the job's physical requirements—such as changing the bottle in a water dispenser—it now specified that only men would be considered.² When Cao called the company, Juren Academy, to clarify, a representative confirmed that men alone were eligible.

Cao decided to take action. With the support of a local antidiscrimination organization, she filed a gender discrimination lawsuit in Haidian District Court in July 2012, and also submitted a complaint to the Beijing Human Resources and Social Security Bureau. When the court failed to respond within the specified time limit, she sought recourse from five other bodies, including the Labour Inspectorate, which dismissed her claim. Finally, after over 100 female university students submitted a letter on Cao's behalf to the Committee for Internal Affairs, the Haidian District Court agreed to hear her lawsuit in September 2013.³

Ultimately, Cao settled out of court. Along with issuing a formal apology, Juren Academy paid damages of 30,000 yuan (approximately the median household income for a year) in January 2014. While this was a modest resolution for a lawsuit that took a year and a half and remarkable persistence, Cao's case also made history: according to media reports, it was the first gender discrimination lawsuit to proceed through China's judicial system.⁴ Moreover, Cao's commitment to addressing gender discrimination in the Chinese labor market didn't end there. Around the same time her case was resolved, Cao joined with three other workers who had recently filed antidiscrimination lawsuits in China to urge the adoption of a new, stronger employment discrimination law that would make it easier for workers to pursue justice through the courts.⁵

Cao's case made headlines because of its novelty—but also because it represented such a common experience for young women nationwide. According to a 2011

survey by the All-China Women's Federation, 90 percent of female students reported facing gender discrimination in employment.⁶ This national statistic fits into a larger global picture: despite some important progress in recent decades, gender discrimination in employment remains rampant and cuts across sectors, countries, and socioeconomic contexts.^a For example, according to a 2020 survey of business school graduates with work experience in eighty-four countries, 42 percent of women had experienced some form of gender discrimination or sexual harassment in the preceding year.⁷ Likewise, in a 2018 survey across seventeen countries, the majority of female farm workers—ranging from 52 percent in the United States to 78 percent in India—agreed that discrimination was “widespread” in agriculture.⁸

Moreover, for countless women worldwide, gender discrimination often closely intersects with discrimination based on family status. In the twenty-first century, women are still regularly fired when they become pregnant, while young women without children often face discrimination based on the mere possibility of their becoming pregnant in the future. Meanwhile, mothers and women with responsibilities caring for aging parents or a family member with a disability often face higher barriers to promotions and persistent stereotypes about their abilities and commitment.

What are the effects of these different forms of discrimination on women's overall economic outcomes around the world? How many countries have comprehensive laws on the books that not only prohibit gender discrimination at all stages of employment but also protect against discrimination based on pregnancy, marital status, or family status? Have laws made a difference for gender equality in the economy—and if so, how?

GENDER DISCRIMINATION AT WORK: EVIDENCE AND IMPACTS

Gender discrimination in employment can take a wide range of forms. In some cases, like the gender-specific job ad Cao Ju encountered, discrimination is direct and explicit. In others, discrimination is indirect, arising from policies and practices that do not explicitly differentiate on the basis of gender but disproportionately disadvantage women.

a. The terms “sex” and “gender” have been used differently across countries and historical periods. Their usage also varies in law, and interpretations of these terms vary by courts. For example, though discrimination laws often use only the term “sex,” courts in many countries have interpreted this language to encompass both sex as a biologic feature and gender as a social construct or set of norms; other times, however, “sex” has been interpreted narrowly. Notably, some languages do not distinguish between “sex” and “gender,” though English translations of laws written in these languages inevitably use one term or the other. Given this variation across time, geographical contexts, legal systems, and languages, we cannot systematically determine the intended or applied meaning of “sex” or “gender” in the legislation of every country. Throughout this book, we use the term “gender discrimination” as a broad term to refer to laws, practices, views, and actions that disadvantage a group of people based on sex and/or gender, and “gender inequality” to refer to the resulting disparities. We use “sex discrimination” when referring to specific legislative language or case law based on that language.

Both direct and indirect discrimination can be intentional. For direct discrimination, this is generally straightforward: an employer that systematically rejects job applications from women, for example, is directly and intentionally discriminating on the basis of gender. Yet even “gender-neutral” policies or practices can reflect a conscious choice to discriminate. An employer’s adoption of a specific job requirement for the purpose of excluding more women than men—for instance, a minimum height test that is unnecessary to the job—would constitute indirect but intentional discrimination.

In other cases, an employer may not have anticipated that a particular practice or requirement would have a disparate impact on women, in which case it may be understood as unintentional indirect discrimination. For example, some employers may not have thought through how basing a new employee’s salary substantially on their prior pay, rather than focusing on job requirements and performance, is likely to result in lower wages for women because the process perpetuates patterns of inequality in the economy. Further, implicit and unconscious biases can play a role in driving both direct and indirect discrimination. For decades, psychological studies have found that stereotypes impact decisions.⁹ This is true of gender as well as numerous other aspects of identity.

Whether intentional or not, however, the ramifications of discrimination are significant—for individual workers, for families, for workplaces, and for economies as a whole. This section examines what we know from studies conducted across countries about the nature, extent, and effects of gender discrimination at each stage of employment. As these studies show, gender discrimination of all kinds—direct and indirect, intentional and driven by unconscious biases—persists across contexts, with significant impacts on women’s economic opportunities and broader consequences that are borne by all.

Discrimination and Disparities in Hiring

A significant body of research has found that prospective employers discriminate on the basis of gender before even meeting their job candidates. Exposing explicit discrimination, studies have documented stated gender preferences in online job postings in countries including China, India, Indonesia, Brazil, Pakistan, Nigeria, Russia, Mexico, Japan, Colombia, Argentina, Peru, and Venezuela.¹⁰ And unsurprisingly, research has shown that these ads shape who applies and who is hired. For example, one study of Chinese job boards found that the share of female applicants dropped by 15 percentage points when a job posting expressed a preference for male applicants and increased by 25 percentage points when the post indicated that women were particularly encouraged to apply. Meanwhile, 95 percent of callbacks targeted applicants whose gender aligned with the job post’s stated preference.¹¹

Moreover, even where employers do not explicitly state that they are seeking men or women to fulfill a particular position, new technologies have made targeting potential job applicants by gender easier than ever. For example, a 2018 US-based

investigation found that fifteen employers, including some large companies such as Uber, had purchased ads on Facebook that would advertise jobs only to one gender. Among these, the Pennsylvania State Police sought to recruit only men, whereas an Idaho community health center hiring nurses exclusively targeted women.¹²

As this example suggests, gender discrimination in hiring affects all genders, though the economic consequences are greater for women than for men. Specifically, research shows that women tend to face more discrimination in the review of their CVs when they are applying for a high-paid position in a male-dominated field, such as engineering. In contrast, women receive preference over male candidates for administrative and low-wage waitstaff positions—roles that align with gender stereotypes.¹³ For example, in the United Kingdom, an experimental study using fictitious job applicants with comparable qualifications found that 59 percent of men were not invited to interview for a secretary position, compared to just 16 percent of women. Meanwhile, just 23 percent of men did not receive an interview invitation for an engineer position, compared to 46 percent of women.¹⁴ Likewise, a study of Australia's labor market found that women were more likely to receive callbacks for positions in female-dominated occupations.¹⁵ And importantly, because male-dominated occupations remain the most highly remunerated, this means that women face among the highest rates of discrimination when applying for the best-paid jobs.¹⁶

This type of discrimination also provides an example of how gender biases are reinforced. When people hired for a particular position are overwhelmingly one gender, this shapes attitudes and actions more broadly. For example, around the world, just 6 percent of early childhood education teachers are men,¹⁷ and surveys indicate that men are hesitant to enter such a female-dominated field¹⁸ and that some parents are less accepting of the idea of a male teacher in their child's preschool.¹⁹ At the same time, even slightly changing the gender composition of the early childcare workforce can begin to move these norms: one study in Turkey found that when parents encountered a male preschool teacher, their views shifted toward believing that men and women were equally qualified for the role.²⁰

These types of shifts are important not only for creating equal opportunities in employment but also for advancing equal pay. Across countries, structural discrimination contributes to the systemic devaluation of work perceived as “feminine,” such as teaching and caregiving. Hiring discrimination that relies on gender stereotypes to reinforce occupational segregation therefore also reinforces unequal pay, with wide-ranging impacts on women's economic stability and independence.

Discrimination and Disparities in Compensation

Gender gaps in pay persist across countries, from an average of 43 percentage points in Pakistan and 40 percentage points in the Netherlands, to 20 percentage points in Mexico and 12 percentage points in Tanzania.²¹ The average

compensation gap worldwide stands at 21 percentage points, and in only a handful of countries—such as Panama, Thailand, and the Philippines—are women’s average monthly earnings greater than or on par with men’s.

A range of factors contribute to lower total earnings for women. In over two-thirds of countries, where girls have faced greater barriers to attending school, women still have lower levels of educational attainment than men.²² Women are also more likely to work part-time in order to accommodate caregiving responsibilities, which remain disproportionately borne by women. Women are overrepresented in low-wage industries and occupations when employers discriminate in hiring and also when female-dominated occupations are paid less. The low pay typical of many occupations in which women are concentrated is often attributable to the broader undervaluing of “women’s” work; overall, research has shown that as more women enter a specific field, average wages tend to decline.²³ These and other differences that grow out of structural inequalities all have consequences for earnings.

Yet even after accounting for all of these differences that derive from broader gender inequalities in the economy, direct discrimination in individual pay is likely responsible for a significant share of the pay gap across countries. Indeed, numerous studies have found that a substantial percentage of the gender wage gap is “unexplained” by any observable differences in education, experience, or occupation, suggesting it is likely the consequence of direct discrimination by employers and/or the systematic devaluation of work performed predominantly by women. For example, in Nigeria, the gender wage gap in the private sector is more than three times greater than in the public sector, and analysis controlling for differences in education and other factors between men and women suggests more of the private-sector wage gap is “unexplained” other than by discrimination.²⁴ Similarly, in Brazil, a study found that, after accounting for education and experience, women still earned 24 percent less than men in the formal economy and 20 percent less in the informal economy, primarily as a result of discrimination.²⁵ Further, research from across countries suggests there is a “motherhood pay gap” that leads to even wider gender disparities in pay among workers with children.²⁶ As detailed in later chapters, the motherhood pay gap reflects how inadequate and gender-unequal support for caregiving, stereotypes about working mothers, and restrictive norms about work and care mean that having a child often has far more significant economic consequences for women than for men. Fully addressing disparities in compensation will require addressing not only unequal pay within a given workplace but also the broader inequalities that lead to women being underpaid.

Discrimination and Disparities in Promotions, Training, and Demotions

While discrimination in pay and hiring may be top of mind when people think about gender discrimination in employment, discrimination in opportunities for advancement is equally consequential. Gender gaps in leadership positions are

even greater than pay gaps: women represent just 31 percent of senior managers and a mere 7 percent of Fortune 500 CEOs worldwide.²⁷ Discrimination in promotions and demotions, as well as unequal opportunities to gain new skills through employer-provided trainings, fuel these disparities.

Discrimination in promotions often flows from discriminatory evaluation processes. For example, research has documented that women are often rated more negatively during performance reviews, and more likely to have their success attributed to “luck.”²⁸ At the same time, an analysis of 200 performance reviews from a large tech firm found that women tend to receive more vague feedback than their male colleagues, who were more likely to receive specific praise and pointers on areas for improvement; moreover, vague feedback correlated with more negative ratings for women than it did for men.²⁹ Notably, both male and female evaluators show bias in their assessments, though evidence of bias among male raters tends to be greater.³⁰

Barriers to training and professional development opportunities undermine women’s chances of moving up at work. Women receive fewer opportunities to increase their skills through employer-provided trainings³¹—and even when they do, their participation doesn’t always pay off. One study from Sweden, for example, found that men were more likely than women to get a raise after completing a training designed to make them eligible for a promotion.³²

Moreover, in a range of countries, research has shown that gender stereotypes about leadership responsibilities also influence gender gaps in promotions. An empirical study of the banking sector in Albania, for example, found that the perception that women were better suited for staff rather than managerial positions was one of the most significant barriers to women’s advancement.³³ A qualitative study of 162 female executives spanning seventeen countries in Latin America found that “machismo,” or a belief in “male supremacy,” was a barrier to women accessing high-level positions.³⁴ Similarly, a study based on interviews with twenty-six female managers working in harbors across ten African countries found that the perception that men belonged in decision-making roles significantly limited women’s prospects of moving up the ladder.³⁵ Meanwhile, a study of the Belgian labor market found that women were 10 percentage points more likely than men to experience a “job authority” demotion—for example, a reduction in managerial responsibilities that isn’t necessarily accompanied by an immediate change in pay or title but that can have long-term career consequences.³⁶

Other types of discriminatory laws, policies, and restrictive norms also affect women’s chances of promotion. For example, in a study based on interviews with twenty-four female academics working in Saudi Arabia, two-thirds of respondents cited the male guardianship system as a barrier to women’s ability to perform certain work activities, hindering their access to leadership roles.³⁷ In Ghana, a qualitative study of women in the Civil Service found that women

were regularly restricted from undertaking field work—often a requirement for promotion—unless they received written permission from a male family member.³⁸ In a study based on interviews with twenty-seven female managers in India, women reported being excluded from international assignments based on presumptions about their family responsibilities, contributing to lower chances of promotion,³⁹ while a study analyzing questionnaires from 174 women managers across Kuwait, Qatar, and the United Arab Emirates found that 63 percent agreed with the statement that “women often lack freedom of geographical mobility which impedes their career advancement.”⁴⁰

Further, women—particularly those with caregiving responsibilities—are at higher risk of involuntary demotion. For example, case law has documented numerous demotions, missed promotions, and retaliatory transfers following maternity leave; in Italy, for instance, a new mother sued after she was required to relocate to a new office 300 kilometers away when she returned from leave, while her temporary replacement kept her previous position. In 2017, the Court of Cassation found that the transfer was a discriminatory attempt to force the woman to resign.⁴¹

The impacts for individuals are clear: women who face a so-called glass ceiling and find themselves stuck in lower-level positions earn less and have less influence at work. But workplaces also suffer. A substantial body of research has shown that more diverse leadership structures lead to greater innovation, more creative problem-solving, and higher profitability.⁴² Advancing gender equality in the economy and ensuring that workplaces make the most of their employees’ potential require equal access by all to opportunities for skills development, new responsibilities, and decision-making roles.

Discrimination and Disparities in Terminations

Finally, research suggests that gender discrimination and implicit bias may shape risks of termination. A study of departures from S&P 1500 firms found that female executives are more likely to be terminated when the board of directors is male-dominated.⁴³ In one study of the financial industry—a male-dominated field—female advisers who engaged in misconduct were 20 percent more likely to lose their jobs than their male counterparts, despite making less costly mistakes and having a lower likelihood of “repeat offenses.”⁴⁴ Moreover, women who lost their jobs due to misconduct were 30 percent less likely to land a new position in the financial industry within a year, compared to men who had committed similar offenses.

Further, in some industries, studies suggest women are particularly likely to be pushed out of jobs due to working conditions or failure to promote, sometimes called a “constructive” discharge or dismissal.⁴⁵ For example, at law firms, women are 29 percent less likely to be promoted to partner than men, contributing to

higher attrition rates by women at senior levels and significant gender gaps in firm leadership structures.⁴⁶ Similarly, studies of academia from a range of countries have found high attrition among female faculty, with cascading consequences as female students have reduced access to mentorship from women in their fields.⁴⁷ Women's longer average time to tenure—driven by women's high contributions to teaching and mentoring when this work is devalued compared to publications in tenure decisions; the penalization of women when they coauthor and collaborate in circumstances where men are not penalized; and the lack of flexibility for temporary part-time work to count toward tenure, which disproportionately affects women who have children—is one explanation for these departures.⁴⁸

Gender also shapes vulnerability to job loss when a company is downsizing. Layoffs that are based on seniority often disproportionately affect women due to the broader patterns of gender inequality in the economy that result in women having fewer overall years in the workforce than men. For example, a 2014 analysis of 371 companies that downsized over three decades found that layoffs based on position or tenure significantly decreased both gender and racial diversity in management compared to layoffs based on performance evaluations.⁴⁹

At the same time, research is mixed when it comes to gender and overall risks of involuntary job loss. In some contexts, studies have found men to be more susceptible to layoffs than women. A study focused on Australia suggested that the mixed results (different results for company-specific and countrywide studies) could be explained by the different industries and occupations in which women and men are concentrated, respectively, with women overrepresented in public-sector jobs that are often more secure—thus leading to less job loss at the national level, even when women are at greater risk in company-specific layoffs.⁵⁰

While specific experiences vary across employers and industries, these studies suggest that practices around termination and discipline—whether adopted deliberately or as a result of implicit bias—often have discriminatory effects on the basis of gender. In the context of gender disparities in leadership positions and in employment rates overall, discrimination in terminations is particularly concerning. Globally, as of 2018, women's unemployment rate was around 15 percent higher than men's.⁵¹ While men and women have comparable unemployment rates in some countries, the gap is wide in others.⁵² Moreover, the COVID-19 pandemic led to disproportionate job loss among women across many countries, widening these gaps further.⁵³

Discrimination and Disparities in Employment: Cumulative Impacts

Critically, each form of gender discrimination in employment compounds the others, leading to cumulative disadvantages. For example, while pay discrimination most directly affects the wage gap, nearly all forms of discrimination in employment influence pay disparities, including discrimination in hiring, training

opportunities, and promotions. Likewise, the persistence of gender inequalities helps employers justify further discrimination in hiring, pay, and working conditions.

Effectively addressing gender discrimination in the workplace is critical not only for advancing equal opportunities at work but also for strengthening countries' ability to compete. According to a 2018 analysis from the World Bank, equalizing men's and women's lifetime earnings around the world would result in an increase in wealth per person of \$23,620—or over \$160 trillion total.⁵⁴ In short, eliminating discrimination at all stages of employment—as well as the structural barriers that shape whether men and women have equal opportunities to enter and remain in the labor force—is critical for enabling individuals and societies to thrive.

WHAT WORKS TO ADDRESS GENDER DISCRIMINATION IN EMPLOYMENT?

A growing body of evidence from the field of behavioral economics points to workplace practices that can reduce gender discrimination at work, including by targeting implicit biases. For example, application reviews in which applicants' gender is not revealed, structured interviews, avoiding gendered language in job ads, and avoiding self-appraisals in review processes are all strategies that experiments have demonstrated help create a more equal playing field.⁵⁵ One well-known and powerful example comes from research on professional musicians. In the 1970s, fewer than one in ten members of major orchestras in the United States were women—not because they were less talented, but because they were perceived as such during auditions. After orchestras began holding auditions in which prospective members played behind a curtain, the share of women rose to 40 percent.⁵⁶

This research provides valuable insights into what employers can do if they care about gender equality. Change at scale, however, requires law and policy approaches that apply to all employers. Rigorous studies of policies' impact across countries, as well as examples of case law from individual countries, lend insight into effective approaches to reducing gender-based employment discrimination of all kinds. And while laws alone are just a first step, the evidence shows it's a step that matters.

How Gender Discrimination Laws Can Improve Women's Outcomes at Scale

Enacting laws prohibiting gender discrimination at work provides a tool for pursuing justice and also represents an important normative commitment to the principle of equal opportunity. The positive impact of antidiscrimination laws has been documented in practice. A study using data from 141 countries found that

laws prohibiting gender discrimination in employment had a positive effect on women's labor force participation in formal jobs.⁵⁷

Laws explicitly guaranteeing equal pay for equal work have also had impact, especially when employers are provided with tools or specific guidelines to evaluate pay gaps and identify what share of the gap may be attributable to discrimination. For example, in Quebec, assessments of equal pay in companies with at least 200 employees, undertaken pursuant to the Quebec Act on Pay Equity, resulted in an increase in average pay in nearly 1,100 predominantly female occupations, with a mean pay bump of 6 percent.⁵⁸ In the United States, researchers estimated that enactment of equal employment laws in the 1970s to enforce Title VII, the primary federal law prohibiting sex discrimination at work, reduced the gender pay gap by 10 percent.⁵⁹ Similarly, in the United Kingdom, one study estimated that the adoption of the Equal Pay Act of 1970 and the Sex Discrimination Act of 1975 led to a 19 percent increase in women's earnings relative to men's, and a 17 percent increase in women's employment rates relative to men's.⁶⁰

Moreover, these laws can have impact beyond the workplace by shifting expectations about who belongs in the workplace. For example, in Japan, following the enactment of the 1986 Equal Employment Opportunity law, which addressed gender discrimination across aspects of employment, women were more likely to attend university and choose majors that would enable them to pursue a career in business.⁶¹

How Gender Discrimination Laws Can Improve Access to Justice

Case law also suggests that legal protections against gender discrimination can make a difference. For example, in two separate cases in China—both decided since Cao Ju's groundbreaking case in 2012—women successfully challenged job ads that excluded women from applying to positions as a courier⁶² and a kitchen apprentice,⁶³ respectively, based on the Labor Code's prohibition of discrimination against job-seekers on the basis of sex. Similarly, in a third case, a woman who applied for a copywriter position sued after she was told over the phone that women were ineligible since the position required substantial travel, and because the person who fulfilled the position would be expected to share a hotel room with the company's male president while on business trips.⁶⁴ The West Lake District Court of Hangzhou found that this requirement violated the Labor Code's guarantees of women's equal right to employment and protections against sex discrimination in employment.

The specific wording of legal protections can also be consequential. For example, in New Zealand, female care workers brought a lawsuit against the nursing home where they worked alleging unequal pay, based on the premise that care workers as a class received lower compensation because they were predominantly women.⁶⁵ Specifically, in 2009, 92 percent of New Zealand's 33,000 workers in the eldercare sector were women.⁶⁶ Although men and women employed by the nursing home, Terranova, received equivalent wages, the fifteen women

who brought the lawsuit argued that they were all undercompensated as a result of structural discrimination. In short, they were seeking equal pay for work of equal *value*—a principle that recognizes that even if men and women in a certain occupation are paid the same, if all workers in that occupation are paid less than they would be if the same work was performed predominantly by men, there has been discrimination.

Terranova countered that the law required only equal pay between men and women in the same roles, not “pay equity.” The Employment Court, however, rejected this argument, citing Article 31(b) of the Equal Pay Act, which requires that

equal pay for women for work predominantly or exclusively performed by women, is to be determined by reference to what men would be paid to do the same work abstracting from skills, responsibility, conditions and degrees of effort as well as from any systemic undervaluation of the work derived from current or historical or structural gender discrimination.

In 2014, the Appeals Court affirmed this ruling, holding that in cases where pay was affected by gender discrimination, it was appropriate to examine not only differences in pay on the basis of gender within a single workplace, but also differences between sectors, and that “any evidence of systemic undervaluation of the work in question must be taken into account.”⁶⁷

Finally, protections against indirect discrimination at all stages of employment have made a difference for women. As noted earlier, prohibiting indirect discrimination helps identify and address policies and practices that are “gender-neutral” on their face but that have disproportionate consequences based on sex. Importantly, banning indirect discrimination can help to address inequalities that were created unintentionally and those that were the predictable or even purposeful consequence of a particular policy or practice, evidencing a recognition that the effects of discrimination are significant and require redress no matter the motivation. Indeed, as the US Supreme Court reasoned in an early case on indirect racial discrimination, “good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as ‘built-in headwinds’ for minority groups.”⁶⁸

Moreover, excusing discrimination simply because an employer did not anticipate that its actions would have discriminatory effects creates an incentive for businesses to ignore evidence about the likely consequences of policies and practices known to reinforce inequalities. For example, in Athens, a bank decided to outsource its cleaning staff and proposed to terminate and provide a small severance to the sixty-four cleaners it employed, sixty-three of whom were women. Four of the cleaners rejected the severance pay and initiated a lawsuit, arguing that other employees of the bank, who were in positions that were not predominantly female, were given the option to transfer to another position within the bank according to the bank’s own internal rules. The Civil Court of Athens agreed, finding that the exclusion of cleaning staff from the right to request a transfer to another position constituted indirect

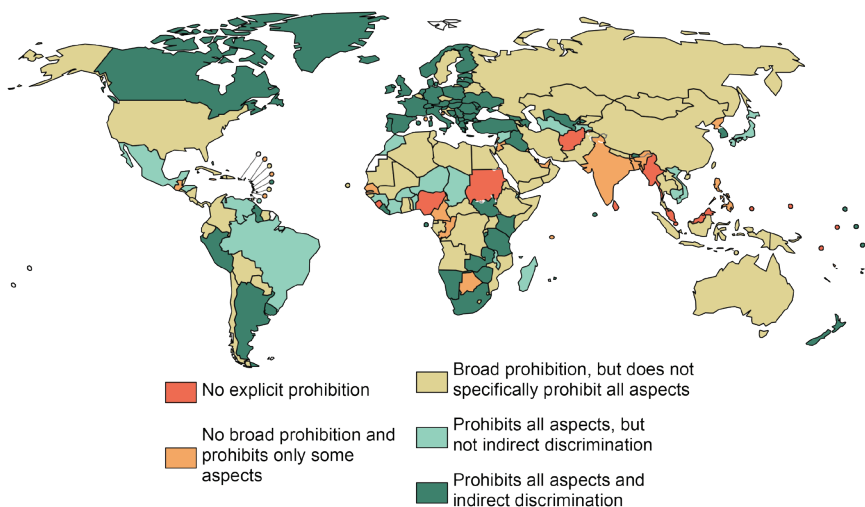
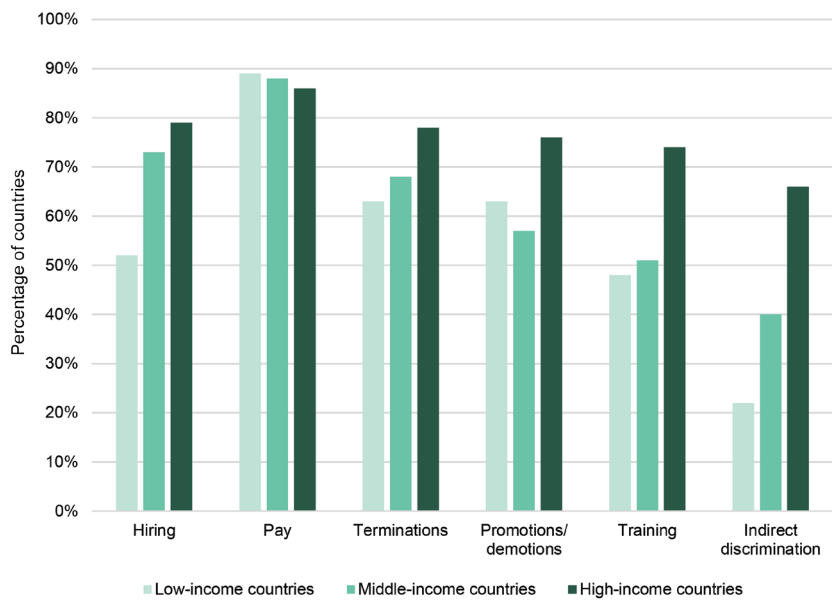


FIGURE 1. Do countries comprehensively prohibit gender discrimination at work?

discrimination on the basis of sex, in violation of a 2010 law designed to realize the principle of equal employment opportunities between men and women.⁶⁹

In a number of countries, courts have also cited legislative protections against indirect discrimination to strike down requirements that job applicants meet certain physical standards that women are less likely to meet, in the absence of evidence that these standards are critical for fulfilling the job duties. For example, in 2016, the European Court of Justice found that a requirement that applicants to the Greek police force be at least 1.7 meters tall constituted indirect discrimination, and that the government could instead require physical aptitude tests more directly tied to position.⁷⁰ In the United States, a federal court in Iowa ruled in 2004 that a strength test required of applicants to a Dial-owned meatpacking plant, which required job applicants to repeatedly lift 35 pounds to a height of 65 inches, had a disparate impact on women, only 40 percent of whom passed the test. The woman who initiated the claim, five-feet-two Paula Liles, actually passed the test but was told that because she had to stand on her tippy toes to do so, she was ineligible. After the ruling in favor of Liles and fifty-one other women who had been rejected from the plant, she said, “I have done physical labor all of my life, and I was able to perform the job at Dial. Dial was the highest paying employer in the area, and I felt that I was being rejected because of my sex and my height.”⁷¹

ADDRESSING GENDER DISCRIMINATION AT ALL STAGES OF EMPLOYMENT: APPROACHES IN 193 COUNTRIES

As of January 2021, a substantial majority of countries—93 percent—prohibit at least some forms of employment discrimination on the basis of sex and/or gender. While explicit references to “sex” are the most common, a small number of countries include references to both sex and gender. For example, South Africa’s Employment Equity Act prohibits discrimination on the basis of “one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.”

By prohibiting discrimination in every stage of employment, countries can signal to employers the need to prioritize relevant policies and practices, clarify to employees the full scope of their rights, and provide clear guidance to courts on how to interpret the law. However, while nearly all countries prohibit at least some aspect of gender discrimination, less than half comprehensively cover all stages of the work life course: hiring, pay, terminations, promotions/demotions, and training. Just 34 percent cover each of these aspects as well as indirect discrimination.

Further, whereas some approach to discrimination is common in countries across income groups, high-income countries are generally more likely to address specific aspects of work. Importantly, there is no reason that countries at all income levels cannot afford to adopt comprehensive protection against discrimination in

employment. Moreover, when countries fail to adequately address discrimination, both individual households and national economies suffer, as women are unable to fully contribute.

Indeed, the feasibility of guaranteeing specific aspects of nondiscrimination in low-income countries is demonstrated by equal pay, the one area that is equally addressed across country income levels: 89 percent of low-income countries, 88 percent of middle-income countries, and 86 percent of high-income countries explicitly guarantee equal pay based on gender, making it the most frequently addressed aspect of gender equality at work in both high- and low-resource contexts.

After pay, hiring and terminations are the most frequently prohibited forms of gender discrimination at work. Seventy-two percent of countries explicitly prohibit sex discrimination at the hiring stage. For example, Albania's 2008 Gender Equality in Society Law requires that "in order to actively promote equality between females and males, before and during work relations," employers must "guarantee equal opportunities for males and females to apply for the job vacancies . . . apply equal criteria in all recruitment procedures . . . [and] employ individuals without distinction to gender in any position or vacant position in all levels of professional hierarchy." Albania's law also specifically establishes that employers must avoid "includ[ing] gender discrimination elements in the job vacancy announcement." However, there are substantial differences across country income level, with 79 percent of high-income countries prohibiting discrimination in hiring and 78 percent doing so in terminations, compared to only 52 percent and 63 percent of low-income countries, respectively.

Compared to pay, hiring, and terminations, fewer countries explicitly address discrimination that matters to advancement within a job. Only 64 percent of countries explicitly prohibit sex discrimination in promotions and/or demotions, while only 58 percent do so for training opportunities. Here, too, the gaps across country income level are wide, with 74 percent of high-income countries compared to 48 percent of low-income countries explicitly prohibiting discrimination in training opportunities.

Moreover, only half of countries (51 percent) have laws with language designed to advance substantive equality, either by specifying that measures taken to increase sex equality in employment are not discriminatory or by mandating sex-based affirmative action. For example, Peru's 2007 Law on the Equality of Opportunities between Women and Men makes it a duty of the State to "adopt temporary positive action measures, aimed at accelerating de facto equality between women and men, which will not be considered discriminatory."

Finally, more than half of countries (58 percent) include the stronger guarantee of equal pay for work of equal value, which is critical for legal recourse for women working in female-dominated occupations that may receive lower pay than equivalent male-dominated occupations. For example, Fiji's 2007 Employment

Relations Promulgation declares it to be a fundamental principle and right that “every employer shall pay male and female workers equal remuneration for work of equal value.” Similarly, Nepal’s 2017 Labor Code states that “there should be no discrimination on the basis of gender in terms of remuneration on equal value of work” and further clarifies that “the equal value of work shall be determined on the basis of the nature of the work, the time needed to perform the work, and the efforts, skills and the production from the work.”

Some countries undermine prohibitions of gender discrimination by allowing certain types of businesses to be exempt from these laws. Four percent of countries allow for small business exemptions in one or more aspects of antidiscrimination law. For example, the Labor Standards Act in the Republic of Korea, which prohibits gender discrimination, applies only to businesses that have at least five employees. In Mauritius, prohibitions of gender discrimination in hiring do not apply when “determining who should be offered employment where the employer employs no more than 10 employees on a full-time basis.” Similarly, 3 percent of countries have exceptions for charities or nonprofits and 12 percent have exemptions for religious organizations. In some countries, religious exemptions are limited to selection of clergy, whereas others apply much more broadly. For example, the Barbados Employment (Prevention of Discrimination) Act exempts any “practice of a body established for religious purposes that conforms with the precepts of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.”

GENDER DISCRIMINATION BY ANOTHER NAME: CAREGIVING DISCRIMINATION

While prohibiting all forms of gender discrimination in employment is a critical start, without addressing discrimination based on family responsibilities, these laws may address only a fraction of the bias and barriers women face at work. A series of cases from across countries make this clear:

- In Germany, Silke-Karin Mahlborg applied for a permanent position in the hospital where she had been working on a temporary basis. But after she disclosed her pregnancy, the hospital told her she was no longer eligible, as pregnant women were prohibited from working in the operating theater under German law. Mahlborg sued, claiming sex discrimination, but the Labour Court sided with her employer. Only when the case reached the European Court of Justice was it overturned.⁷²
- In the United States, Teresa Goff, a surgical nurse, lost her job after she took intermittent unpaid leave to care for her mother, who had a serious health condition. Citing absenteeism, Goff’s boss fired her, saying, “You don’t have to call in the morning about momma. In fact, you won’t have to call in ever again about momma.”⁷³ Goff sued for retaliation and the case ultimately settled out of court.

- In Australia, Deborah Schou, an editor who had been with her employer for seventeen years, was compelled to resign after she requested to work from home two days a week to be closer to her son, who suffered from asthma, recurring chest infections, and separation anxiety. Though her employer initially approved her request and agreed to provide a modem and fax line that would allow her to work remotely, they never followed through, and Schou initiated an indirect gender discrimination claim. After extensive litigation, the Court of Appeal ruled against her, finding that the employer's refusal to accommodate her was reasonable.⁷⁴
- In South Africa, Beverley Whitehead, a pregnant woman, brought a discrimination claim after she applied for a human resources job and was told she was ineligible for a permanent position since her maternity leave would affect her availability; instead, the employer, Woolworths, offered her a fixed term contract that ended just before her due date. The Court of Appeal sided with Woolworths, determining that she simply had not been the top candidate for the permanent position and would not have been hired even if she weren't pregnant; however, a concurring opinion also argued that "to hold that an employer cannot take into account a prospective employee's pregnancy would be widely regarded as being so economically irrational as to be fundamentally harmful to our society."⁷⁵

As these cases demonstrate, discrimination based on caregiving and family responsibilities affects women at all stages of employment—and thus prohibiting gender discrimination without addressing parenthood and caregiving creates a huge and consequential gap. Further, as noted earlier, research has long shown that family status accounts for a substantial share of gender disparities in pay in countries at all income levels.⁷⁶ For example, a study of twenty-one low- and middle-income countries found a 42 percent "motherhood pay penalty," meaning that mothers earned on average \$2.37 per day compared to nonmothers' \$4.12.⁷⁷ Similarly, in five out of seven high-income countries, another study found that mothers of two children earned between 5 percent and 24 percent less than nonmothers, even after controlling for education, household income, and other factors; only in Sweden and Finland, countries widely recognized for having more supportive policies for infant care, were the pay gaps between nonmothers and mothers of two insignificant.⁷⁸ In short, the impacts of caregiving on women's economic outcomes are well and widely documented.

Moreover, whereas gender discrimination is at least widely acknowledged as unacceptable, surveys of employers reveal that discrimination based on family status remains commonplace and openly practiced. A survey of ten companies in Yekaterinburg, Russia, for example, found that seven out of ten managers stated that they would refuse to hire a woman with a child under three, and that they would prefer female candidates over the age of thirty with children over the age of

five.⁷⁹ In Tunisia, a study of the tourism industry found that 58 percent of employers took marital status into account when evaluating female candidates, while 52 percent felt that whether she had young children was an important factor.⁸⁰ In the United Kingdom, a survey found that 36 percent of private-sector employers believed they should be able to ask a job applicant about her plans to have children, while 59 percent thought women should disclose their pregnancies and 46 percent indicated it was reasonable to ask whether female applicants already had young children.⁸¹ What are the effects of these specific forms of discrimination, and how can more comprehensive legal protections have an impact?

Discrimination Based on Family Responsibilities: Global Evidence

Like employment discrimination based on gender alone, discrimination based on actual or anticipated family responsibilities remains rife across countries. Around the world, these beliefs and practices disproportionately disadvantage women at each career stage, contributing to the widening economic gaps between women caring for family members and other workers. At the same time, gendered expectations about caregiving also increasingly affect men while reinforcing stereotypes that operate to everyone's detriment.

Discrimination against Young Women Based on Presumptions of Future Pregnancy.

As with broader gender discrimination, discrimination based on actual or anticipated caregiving statuses can begin during recruitment. Studies have found that this discrimination can extend to all women of child-bearing age, regardless of whether they have or intend to have children. In one experimental study of the financial sector from France, twenty-five-year-old women were far less likely to receive an interview for a long-term contract than twenty-five-year-old men, all else being equal; no such discrimination was found against thirty-seven-year-old women.⁸²

Women's age also intersects with their marital status: a study based in China, using fictitious job candidates who disclosed their marital and family status in their cover letters, found that married twenty-eight-year-old women without children were 29 percent less likely to be invited to interview for an accountant job than single, childless women of the same age with equivalent credentials.⁸³ Similarly, an experiment involving 9,000 CVs in Austria, Germany, and Switzerland—countries where it is typical to list personal details such as family status on one's resume—found that married, childless women were 4–6 percentage points less likely to be invited to interview for a part-time job than single, childless women, suggesting that employers were seeking to avoid hiring those candidates most likely to become pregnant in the near future.⁸⁴

Finally, caregiving discrimination in hiring can also extend to men when employers are aware that a male job candidate has significant care responsibilities: a US-based study found that when employers knew that an applicant was

the primary caregiver for a child, they were less likely to be hired, regardless of gender.⁸⁵ As this finding suggests, prohibiting discrimination against women alone is insufficient to reach all instances of caregiving discrimination—particularly as men take on greater caregiving roles. Similarly, US research has documented hiring discrimination against parents who “opt out” of the labor market for a period to meet caregiving needs; moreover, rates of discrimination are somewhat higher for “opt out” men than “opt out” women.⁸⁶

Discrimination against Pregnant Women. Employment discrimination against pregnant women is also widespread, and studies suggest it commonly reflects both explicit and implicit biases.⁸⁷ In Belgium, for example, a study found that job applicants who disclosed their pregnancies were far less likely to move forward in the hiring process.⁸⁸

In some cases, this discrimination is overt: reports from countries including Honduras, El Salvador, and Mexico, for example, have found that women applying for factory jobs are required to take pregnancy tests as part of the hiring process and are excluded from consideration if they test positive.⁸⁹ Even once hired, they often must continue to take pregnancy tests periodically to stay employed. While some factories have been pressured to eliminate these practices in recent years, reports suggest that mandatory testing continues. In Myanmar, for example, an investigation by the International Labour Organization found that fifteen out of sixteen garment factories routinely required pregnancy tests as part of the hiring process.⁹⁰

Discrimination against Parents of Young Children. Experiments have found that having children, particularly young or multiple children, is a common source of employment discrimination for women. For example, a US-based experiment found that women who indicated on their CVs that they hold leadership roles in the Parent-Teacher Association received fewer invitations to interview than women whose materials included no evidence of motherhood, though for men, parenting status did not affect callback rates.⁹¹ Similarly, a study from Germany found that being a father did not affect a man’s likelihood of receiving an interview for an event manager position, but that being a mother reduced women’s chances of getting a callback by about 25 percent.⁹²

Real and anticipated caregiving responsibilities can also trigger discrimination in pay and promotions. As one example, in a 2017 study from Switzerland that involved showing over 700 fictitious CVs to hiring managers, respondents on average suggested pay ranges for women with two or three children that were 2–3 percent below what they recommended for childless women.⁹³ Research has also documented that employers’ presumptions that mothers in the workplace will have greater “work–family conflict” make them more reluctant to promote women.⁹⁴

Discrimination is particularly common for parents returning to work after taking leave. One UK poll, for example, found that 20 percent of women returning

from maternity leave reported that they were demoted or had their hours cut.⁹⁵ Likewise, a study from the Danish Institute for Human Rights found that 45 percent of women and 23 percent of men who took parental leave faced discrimination when they returned to work.⁹⁶ In some cases, this discrimination may be explicit and intentional; in others, however, it is likely shaped by implicit biases and diminished expectations about the abilities of women—and mothers in particular—in leadership roles. For example, research has shown that mothers in the workplace are often viewed as “warmer” but less competent than non-mothers, whereas fatherhood does not influence perceptions of men’s competence;⁹⁷ studies also suggest that mothers are commonly viewed as less ambitious than other women.⁹⁸

Some studies have also found that mothers are more likely to lose their jobs than fathers. A 2020 analysis of the United States, for instance, found that women without children were less likely to lose their jobs than men without children, but that mothers were significantly more likely to face job loss than fathers.⁹⁹ In Canada, an analysis of caregiving discrimination claims brought before the Canadian Human Rights Tribunals from 1985 to 2016 found that cases contesting terminations accounted for 56 percent of the claims brought by women, and 49 percent of caregiving-related claims overall.¹⁰⁰

Discrimination against Workers Caring for Aging Adults and Family Members with Disabilities. Like workers with young children, workers who are balancing paid work with caregiving responsibilities for an aging adult or a family member with a disability often face discrimination at work, particularly if they need to take leave to meet caregiving needs. For example, one study based on a survey of 118 US-based hiring managers found that workers who were the primary caregiver for an aging adult were recommended to receive a lower salary than noncaregivers, while “sandwich” caregivers—with both childcare and eldercare responsibilities—faced more discrimination than those caring for children alone.¹⁰¹

This discrimination can contribute to pay gaps. For example, a UK study found that workers caring for family members who were sick, elderly, or living with a disability earned less than noncarers, with a far greater wage penalty for women than men.¹⁰² The researchers found that a substantial share of this gap was “unexplained,” suggesting it may arise from discrimination. In particular, they noted, workers with care responsibilities who request flexible work or other arrangements may be perceived as less committed, leading to fewer opportunities for advancement. Similarly, a study of Estonia, Latvia, and Lithuania found that workers who were caring for an aging family member or family member with a disability faced a significant wage penalty, which the authors speculated could be partly attributable to employer discrimination and reluctance to promote workers with caregiving responsibilities.¹⁰³ Notably, in Lithuania, the wage penalties were evident only for female caregivers, whereas in Estonia and Latvia they affected men and women alike.

In recent years, increasing attention has been brought to this type of discrimination. In the United States, a 2016 study found that the number of family responsibilities lawsuits based on eldercare grew by 650 percent over the preceding decade, compared to a 216 percent increase in all types of family responsibilities discrimination lawsuits and a 13 percent decrease in employment discrimination cases filed in federal courts overall.¹⁰⁴ Particularly as the aging population grows globally, families' caregiving needs for older adults are likely to intensify, making employment discrimination against these caregivers an important area for greater prioritization.

Caregiving Stereotypes and Workplace Norms. Finally, gender stereotypes about caregiving can have consequences for workers beyond those directly linked to job outcomes. For example, discriminatory norms can give rise to hostile workplace cultures; a 2013 study based on a survey of US workers found that fathers who took on greater caregiving responsibilities, thereby defying gendered expectations about care, were subject to more harassment at work than men who either were not fathers or spent less time on childcare, and in particular more harassment suggesting they weren't "man enough."¹⁰⁵ Similarly, another US study found that men who took leave for caregiving, whether for a child or their elderly mother, were perceived as weaker, less ambitious, and more "feminine."¹⁰⁶

Further, while discrimination based on caregiving has the most significant consequences for workers with family responsibilities, its underlying premise—that women are inherently and uniquely equipped to be caregivers—has implications for everyone. Specifically, gender stereotypes about caregiving shape broader gender norms about behavior in the workplace that influence how workers are evaluated. Women who depart from the "nurturing" stereotype, for example, are often viewed as standoffish or difficult, while more "nurturing" men are commonly seen as ineffective leaders.¹⁰⁷ In some cases, gendered expectations about different behavior are overt: one qualitative study of the Nigerian Civil Service, for example, reported that when asked whether women should have the opportunity to serve as a department head, eight out of ten male respondents indicated that "a woman's role should not be to 'lead' but to 'care' for other people."¹⁰⁸ Meanwhile, the same behavior deemed "aggressive" when exhibited by a woman at work is often interpreted more positively as "assertive" when demonstrated by a man.¹⁰⁹ In the same analysis of a large tech company's performance reviews discussed previously, 76 percent of comments about being "too aggressive" were found in women's reviews.¹¹⁰

What Works to Address Caregiving Discrimination?

Enacting protections against discrimination on the basis of marital status, pregnancy, and family status is important not only for providing a practical tool to workers who face discrimination on these grounds but also for expressing a normative commitment to enabling all people to be active in the economy while

caring for family. Moreover, these laws can have direct effects on reducing disparities. For example, a study of the Pregnancy Discrimination Act, a 1978 law adopted in the United States, estimated that its enactment boosted the labor force participation of pregnant women by 8 percentage points, of mothers of infants by 3 percentage points, and of mothers of older children by 2 percentage points.¹¹¹ In the Czech Republic, a 2009 law that banned employment discrimination on a wide range of grounds, including pregnancy, maternity, and paternity, decreased the motherhood wage gap significantly.¹¹²

Case law from a range of countries also indicates these laws matter in reducing discrimination. In Romania, which prohibits employment discrimination on the basis of both sex and parental status, the Court of Appeal of Bucharest found that there had been parental status discrimination when a woman returning to work after maternity leave was demoted.¹¹³ As discussed in more detail in chapter 6, in addition to addressing parental status discrimination directly, ensuring job protection for parents who take leave is another important approach to ensuring parents' equal opportunity in the workplace.

In Lesotho in 2014, the Labour Court ordered an investment bank to rehire and pay damages to a woman who was fired when she became pregnant, citing the Labour Code's prohibition on terminating employees on the basis of pregnancy.¹¹⁴ Importantly, however, while banning discrimination on the basis of pregnancy is critical, so too is providing essential accommodations to enable pregnant workers to continue performing their job duties. While many pregnant women will need no accommodations, for some, these minor adjustments are critical to health and the ability to keep working.^b

Protections against indirect sex discrimination can also play an important role in reaching discrimination linked to caregiving. Since women continue to take on the majority of care work worldwide and often take longer periods of parental leave as a result of unequal policies, employer practices that base pay or opportunities for advancement on factors that are affected by caregiving responsibilities tend to have a disproportionate impact on women. For example, in Italy, a court ruling in 2017 held that a company had indirectly discriminated against women through a policy that required "real presence at work" to qualify for a bonus, since in effect the policy discriminated against those workers—disproportionately women—who had taken parental leave.¹¹⁵

b. As this chapter has emphasized, recognizing and addressing conditions such as pregnancy that relate to biologic differences on the basis of sex is integral to advancing gender equality. At the same time, the need to accommodate pregnancy-related health statuses is not unique; numerous health conditions require basic accommodations at work and/or paid time off for recovery. In short, while fully recognizing and meeting the basic needs of all pregnant workers—including by prohibiting pregnancy discrimination—is critical to gender equality, it would be incorrect to conceptualize this as "special" or exceptional treatment based on sex.

Why Aren't Protections on the Basis of Sex or Gender Enough?

As Italy's example demonstrates, in some countries, protections based on sex or gender have extended to discrimination on the basis of pregnancy, family status, or marital status, particularly in countries where laws prohibit indirect gender discrimination. Similarly, in a landmark case from 1990, the European Court of Justice, which interprets the laws that cover all of the European Union, found that "only women can be refused employment on the grounds of pregnancy and such a refusal therefore constitutes direct discrimination on the grounds of sex."¹¹⁶ A year later in the United States, the Supreme Court ruled that the federal law banning sex discrimination also encompassed "sex plus" discrimination—that is, discrimination based on sex and another unenumerated ground like family status—in a decision clarifying that a company couldn't exclude women with young children from consideration for an open job.¹¹⁷

However, there are two key pitfalls to relying on protections against sex or gender discrimination alone. First and most fundamentally, these protections aren't always enough. Particularly when there is no male "comparator" who was treated more favorably, legally demonstrating that caregiving discrimination constitutes sex discrimination has not been treated consistently in the courts. For example, in *Carole Louise Webb v. EMO Cargo*, the UK Industrial Tribunal ruled that firing a pregnant worker due to her upcoming "unavailability" did not constitute sex discrimination since an "unavailable" man would be treated the same way, a decision that was overturned only after it was referred to the European Court of Justice.¹¹⁸

Some courts have also simply found that discrimination on these other grounds is valid if not explicitly prohibited. In *Air India v. Nergesh Meerza*, the Supreme Court of India ruled that an airline's requirement that female flight attendants retire after getting married was permissible, since the constitution did "not prohibit the State from making discrimination on the ground of sex coupled with other considerations," such as marital status; while an older case, this decision has never been overturned.¹¹⁹ In Canada, a woman who was denied unemployment benefits on the basis of her pregnancy brought a suit claiming sex discrimination, but the Supreme Court upheld the exclusion, finding that "any inequality between the sexes in this area is not created by legislation but by nature"; it took a decade for the decision to be overturned.¹²⁰

Second, prohibiting caregiving discrimination only when it coincides with gender discrimination—as required to demonstrate indirect discrimination—leaves the door open to broad-based discrimination against caregivers, regardless of gender. The US Equal Employment Opportunity Commission, the body responsible for enforcing employment discrimination legislation, makes this gap clear, stating plainly that:

Title VII [the primary federal employment discrimination law] does not prohibit discrimination based solely on parental or other caregiver status, so an employer

does not generally violate Title VII's disparate treatment proscription if, for example, it treats working mothers and working fathers in a similar unfavorable (or favorable) manner as compared to childless workers.¹²¹

This omission has the potential to leave caregivers of all genders vulnerable to mistreatment. Though caregiving discrimination very often does embody "gender discrimination by another name," it can—and does—affect men as well as women, and men's experiences of caregiving discrimination will likely further intensify as men continue to take on larger caregiving roles. Ensuring that caregiving discrimination is prohibited in its own right is therefore critical to equal opportunity at work for all and important to laying the foundation for longer-term norm change.

In short, addressing indirect sex discrimination and addressing direct discrimination on the basis of pregnancy, marital status, and family status are distinct and critical strategies for ensuring full coverage of discrimination based on gender and caregiving. Protecting caregiving statuses alone will not provide a tool for addressing the wide range of laws and policies that have disparate impacts on women unrelated to caregiving, such as unnecessary physical requirements for certain jobs. Meanwhile, prohibiting indirect discrimination alone will do little to address policies and practices that discriminate against male caregivers and caregivers as a class. By adopting both, however, countries can provide a strong foundation for ensuring caregivers of all genders have equal opportunities in the workplace.

Approaches to Caregiving Discrimination in 193 Countries

As of January 2021, while more than 90 percent of countries prohibit at least some employment discrimination based on sex, only 58 percent of countries do so on the basis of marital status or specifically women's marital status. For example, the Gambia's 2010 Women's Act includes explicit reference to marital status when defining discrimination against women as: "any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life." These types of prohibitions can help protect women from discrimination based on the assumption that they will have children. Provisions are found across all income levels: 48 percent of low-income countries, 58 percent of middle-income countries, and 60 percent of high-income countries prohibit at least some discrimination based on marital status. No country prohibits discrimination based on marital status without also addressing sex discrimination.

Two-thirds of countries explicitly prohibit at least some discrimination at work on the basis of pregnancy. These provisions are most frequently related to prohibiting discriminatory dismissal during pregnancy (67 percent of countries) and relatively few explicitly address hiring (40 percent) or equal pay (28 percent). For

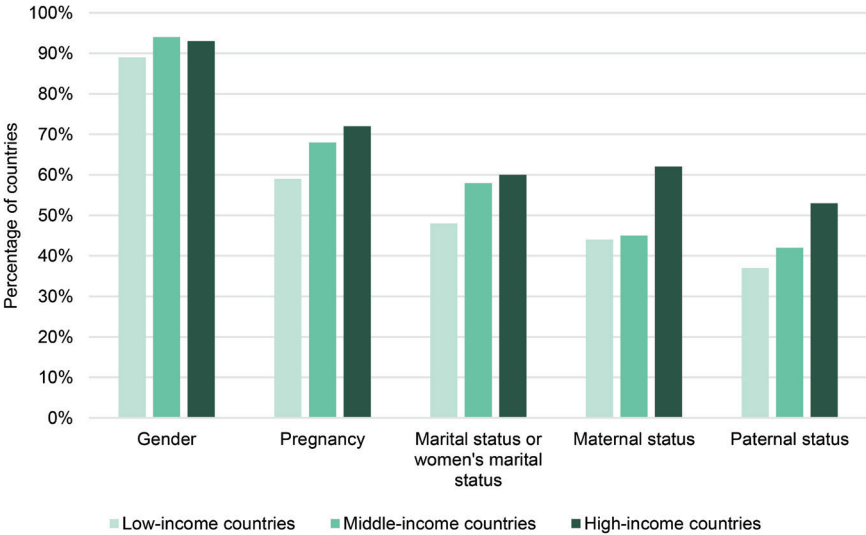


FIGURE 2. Do countries prohibit at least some aspect of caregiving discrimination at work?

example, Malawi’s 2000 Employment Act provides that “an employer who terminates the employment of an employee because the employee is pregnant or for any reason connected with her pregnancy shall be guilty of an offence and the burden of proving that the employment was not terminated because of pregnancy shall be on the employer.” Nearly 60 percent of low-income countries and more than two-thirds of middle-income and high-income countries explicitly prohibit at least some aspect of pregnancy discrimination at work. More high-income countries prohibit discrimination in hiring or pay based on pregnancy than low- or middle-income countries.

Half of countries prohibit at least some aspect of workplace discrimination against women with family responsibilities. However, in 6 percent of countries, legislation may reinforce gendered norms around caregiving by protecting women but not men from caregiving discrimination. For example, Germany’s Equal Treatment Act establishes that there is “an immediate disadvantage because of gender in the case of less favorable treatment of a woman due to pregnancy or maternity.” No provisions address less favorable treatment of men due to paternity. Similarly, in some countries, provisions related to family responsibilities are narrowly defined to cover only workers who are parents. For example, Israel’s Equal Employment Opportunity Law provides that “an employer shall not discriminate between his employees or job seekers because of their sex, sexual orientation, personal status, pregnancy, fertility treatments, IVF treatments, being parents, age, race, religion, nationality, country of origin, place of residence, views, party, or service in the reserve.” In contrast, Uzbekistan’s Law on Guarantees of Equal

Rights and Opportunities for Women and Men uses broader terminology that could cover more forms of caregiving, defining gender discrimination as: “any discrimination, exclusion or restriction aimed at non-recognition of the rights and freedoms of women and men in all spheres of life and activity, including discrimination on the basis of marital status, pregnancy, family obligations, as well as sexual harassment, equal pay for equal work and qualifications.” Australia’s Sex Discrimination Act goes further and explicitly defines family responsibilities, which is a prohibited ground for discrimination, as: “responsibilities of the person to care for or support: (a) a dependent child of the person; or (b) any other immediate family member who is in need of care and support.”

Prohibitions of discrimination against women with family responsibilities are more common in high-income countries (62 percent) compared to middle- and low-income countries (45 percent and 44 percent, respectively). Prohibitions of discrimination against men with family responsibilities are less common across all income groups but continue to be more common in high-income countries (53 percent) compared to middle- and low-income countries (42 percent and 37 percent, respectively). An additional eight countries have narrow prohibitions of discrimination against workers with family responsibilities. Five of these reinforce gender inequalities in caregiving. For example, Belarus prohibits hiring discrimination for women with children under the age of three, single mothers with a child under the age of fourteen, and single mothers with a child under the age of eighteen with a disability. In Azerbaijan, dismissal is prohibited for women raising children under the age of three, but men have the same protection only if they are a single parent. The remaining three countries have gender-neutral provisions prohibiting discrimination against single parents, caregivers of children with disabilities, or caregivers of young children.

To be sure, prohibiting discrimination on these grounds is not enough to shift norms or eradicate bias in the workplace; inclusive caregiving policies are another key piece of the solution. Nevertheless, case law and evidence from around the world indicate that these protections make a difference.

Changes in Laws over Time

Although the world has far to go on comprehensively addressing gender and caregiving discrimination at work, importantly, laws are strengthening over time. In just the five-year period from 2016 to 2021, protections against gender discrimination at every stage of work, as well as protections against indirect discrimination, became more common globally. Likewise, protections against four key forms of caregiving discrimination—pregnancy, marital status, maternal status, and paternal status—all increased during this time.

At the same time, at this rate of change, it will be decades, if not longer, before all countries worldwide have adopted comprehensive protections against gender and caregiving discrimination at work. Moreover, the overall gap between protections based on gender and those based on caregiving remains large.

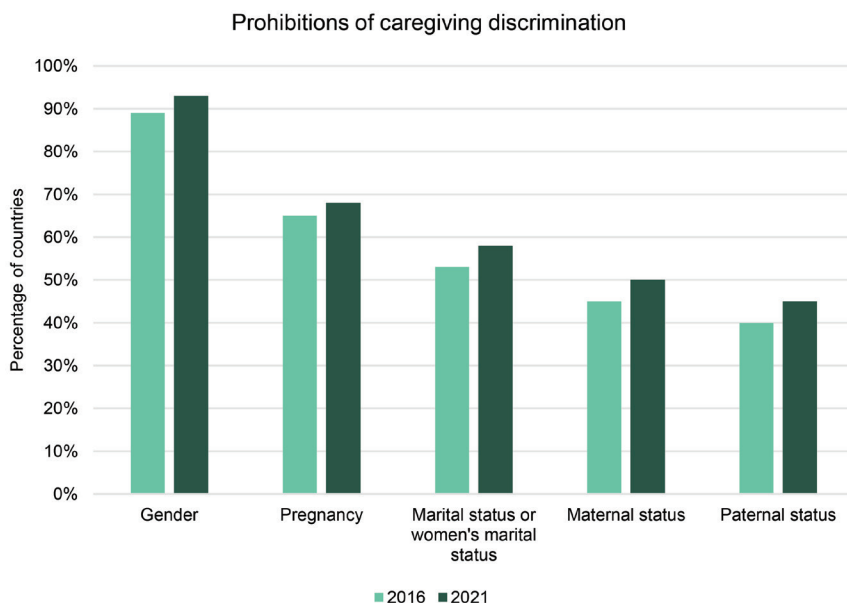
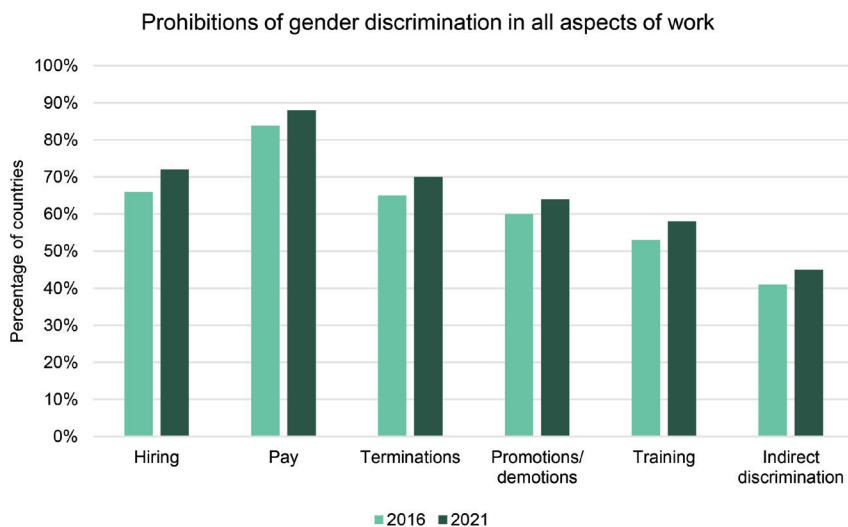


FIGURE 3. Have countries strengthened prohibitions of gender discrimination and caregiving discrimination at work?

TABLE 1 Legal prohibitions of gender discrimination at work, by country income level

	Low-income countries	Middle-income countries	High-income countries
<i>Do countries prohibit gender discrimination in all aspects of work?</i>			
No explicit prohibition	3 (11%)	7 (6%)	4 (7%)
No broad prohibition and only prohibits some aspects	1 (4%)	14 (13%)	7 (12%)
Broad prohibition, but does not specifically prohibit all aspects	13 (48%)	41 (38%)	13 (22%)
Prohibits all aspects, but not indirect discrimination	7 (26%)	14 (13%)	3 (5%)
Prohibits all aspects and indirect discrimination	3 (11%)	32 (30%)	31 (53%)
<i>Is positive action considered gender discrimination?</i>			
No prohibition of gender discrimination	3 (11%)	7 (6%)	4 (7%)
Gender discrimination prohibited; positive action not addressed	15 (56%)	49 (45%)	16 (28%)
Positive action is not gender discrimination or specific mandates for positive action	9 (33%)	52 (48%)	38 (66%)

Importantly, all countries globally have committed to realizing gender equality—including by eliminating discrimination in the law—by 2030 through the Sustainable Development Goals. These commitments build on the United Nations Convention on the Elimination of All Forms of Discrimination against Women, which has been ratified by 189 countries since it was adopted in 1979, as well as the 1995 Beijing Declaration and Platform for Action, both of which included detailed provisions on women's equal rights at work. Although every one of these agreements obligated countries to take immediate action on gender equality at work and end discrimination, countries are far from on track to realize these commitments.

CONCLUSION

Reaching gender equality in the economy requires far more than prohibiting gender discrimination in the workplace, but this is a fundamental and straightforward step that all countries should take. It is well documented that ensuring the economy is accessible to all women boosts countries' GDP—suggesting that stronger legal guarantees of nondiscrimination are not only economically feasible for all nations and central to realizing their global commitments but also a powerful step toward realizing economic gains for countries and communities. Despite progress in recent decades, too few countries prohibit gender discrimination at all stages of employment, from hiring to pay to promotions and terminations; likewise, not enough have taken steps to prevent discrimination based on restrictive gender norms. Moreover, only a fraction of those countries that prohibit gender discrimination

take equivalent steps to address caregiving discrimination, even as substantial evidence shows that leaving caregiving unaddressed will virtually guarantee that gender gaps in the economy persist. Without enabling all people to access employment on an equal playing field—and to continue to advance in their careers after starting a family—no workplace or economy will reach its full potential.

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