Social Science Research 65 (2017) 1–16

Contents lists available at ScienceDirect

Social Science Research

journal homepage: www.elsevier.com/locate/ssresearch

Don't ask or tell: Pay secrecy policies in U.S. workplaces

Jake Rosenfeld

1 Brookings Drive, St. Louis, MO 63130, United States

ARTICLE INFO

Article history:
Received 8 July 2015
Received in revised form 12 December 2016
Accepted 27 January 2017
Available online 31 January 2017

Keywords:
Pay secrecy
Workplace
Stratification

ABSTRACT

How widespread are workplace rules against discussing wages and salaries in the U.S.? And what are the core correlates of whether or not an employer prohibits or discourages this type of speech? Using a unique dataset that includes a measure of whether workers are prohibited or discouraged from discussing pay, this article investigates the prevalence of pay secrecy policies, and what worker- and workplace-level characteristics are associated with these rules. Key findings reveal that these policies are commonplace, despite being illegal, and that they are concentrated in more "coercive" rather than "enabling" organizations. These more coercive workplaces are disproportionately in the private sector, lack union representation, and have managers that are generally punitive in their approach and unaccommodating of employees. Findings also indicate that the greater discretion pay secrecy provides managers does not result in discriminatory application of these rules to women, racial/ethnic minorities, or immigrants. The article concludes with a call for data collection efforts that would allow researchers to analyze the consequences of this widespread managerial practice.

1. Introduction

In the Spring of 2014, 52 U.S. Senators co-sponsored the Paycheck Fairness Act. The proposed legislation would amend the Fair Labor Standards Act of 1938 by making it illegal for employers to punish workers who discuss wages and salaries with their co-workers. The following year, President Obama signed an executive order barring federal contractors and subcontractors, many of which are for-profit, private-sector firms, from instituting pay secrecy rules, claiming that "Pay secrecy fosters discrimination and we should not tolerate it" (Eilperin, 2014).

Pay secrecy policies of the type targeted by the Paycheck Fairness Act and President Obama refer to workplace policies, informal or formal, that discourage or outright prohibit employees from discussing wages and salaries (Gely and Bierman, 2003; Kim, 2015). Despite the recent focus by policymakers, we have very little understanding about the prevalence, predictors, or effects of pay secrecy in U.S. workplaces. Nearly decade ago Colella et al. reported that "there has been little scholarly research" on the topic of pay secrecy (2007: 55), and little has changed in the intervening years. This article begins to fill the research gap. Using a unique dataset of U.S. workers that includes information on whether their employers discourage or prohibit discussions about pay, the article investigates what individual- and workplace-level factors are associated with pay secrecy policies. The article ends with a call for new data collection efforts to gather the requisite information to analyze the consequences of pay secrecy policies for U.S. workers.

E-mail address: jrosenfeld@wustl.edu.

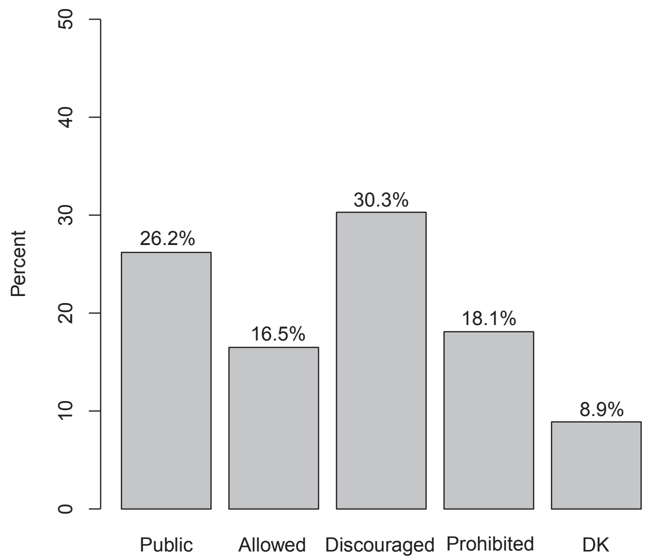
http://dx.doi.org/10.1016/j.ssresearch.2017.01.009

The investigation reveals that pay secrecy policies are common in U.S. workplaces, and key findings from the multivariate analyses indicate that these rules correlate strongly with other indicators of more "coercive" bureaucracies (Adler and Borys, 1996). In particular, workers in the private sector, and workers who do not belong to a labor union, are much more likely to report that their employers discourage or prohibit discussions of pay compared to workers in the public sector and unionized workers. Interaction effects reveal that these influences are additive: workers employed in the public sector who are unionized have the lowest probability of working under a pay secrecy policy, while private sector nonunion workers have the highest probability. The analyses also suggest that pay secrecy policies are less common among workers with more accommodating employers – proxied as those that allow respondents to work from home – and more common among workers whose employers track attendance and punish absences. Finally, despite the increase in managerial discretion resulting from pay secrecy policies, I find no evidence that women, racial/ethnic minorities, or immigrants are disproportionately discouraged from discussing wages and salaries at work.

2. Pay secrecy policies in U.S. workplaces

The Paycheck Fairness Act fell victim to a filibuster, following the path of similar legislation proposed in 2010 and 2012. Critics of the bill cited the possibility of increased lawsuits that would result from passage as a key reason for their opposition (Henderson, 2014). What was largely overlooked in the debate was that pay secrecy policies were already illegal under U.S. law. Courts have repeatedly found that rules against discussing wages and salaries are violations of employees' rights to engage in concerted activity as specified in Section 7 of the National Labor Relations Act (NLRA) (Gely and Bierman, 2003: 127). But given that the legal protections fall under the NLRA, penalties for breaking the law are limited to little more than back pay and reinstatement for workers fired for violating workplace secrecy policies. This weak set of sanctions has led O'Neill to conclude that "Ignoring the law is easier and more efficient for employers because the NLRA does not adequately incentivize compliance" (2011: 1246). And many workers, it seems, "don't even know this right exists" (Dreisbach, 2014).

With employees unaware of their illegality, and employers unafraid of the penalties for implementing and enforcing these restrictions, it should not be surprising if pay secrecy policies are commonplace throughout U.S. workplaces. Yet until very recently, we knew very little of the prevalence of this practice. An online survey from 2001 of 329 employers indicates that over a third "prohibit discussions" of wages and salaries at work. Roughly half of the employers report that no pay secrecy policy exists at their workplace (HRnext.com 2001). These employer survey results likely understate the frequency of this particular workplace rule. Employers who understand that disclosing a pay secrecy policy is an admission of violating the law may be reluctant to disclose the practice to surveyors. The only data from employees that includes information on pay secrecy policies stems from a question in a 2010 survey by the Institute for Women's Policy Research (IWPR), in collaboration with the Rockefeller Foundation. This survey asks approximately 1100 workers whether discussions about wages and salaries are formally prohibited, actively discouraged, allowed, or whether pay scales are publically available at respondents' place of employment. This is the only question of pay secrecy policies included in a dataset of U.S. workers.



Note: Weighted means presented. Data come from the 2010 IWPR/Rockefeller dataset.

Fig. 1. Pay secrecy in U.S. workplaces, 2010.