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116TH CONGRESS
1ST SESSION

H. R. 7

[Report No. 116–18]

To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2019

Ms. DELAURO (for herself, Ms. PELOSI, Mr. HOYER, Mr. CLYBURN, Mr. SCOTT of Virginia, Mrs. DEMINGS, Mr. HUFFMAN, Ms. BROWNLEY of California, Mr. SABLAN, Mr. FOSTER, Mr. TONKO, Mr. COOPER, Ms. SCHAKOWSKY, Ms. WASSERMAN SCHULTZ, Mr. HASTINGS, Mrs. CAROLYN B. MALONEY of New York, Ms. KAPTUR, Mr. POCAN, Mr. WELCH, Mr. DAVID SCOTT of Georgia, Mr. RICHMOND, Ms. FRANKEL, Ms. CLARK of Massachusetts, Mr. LIPINSKI, Mr. CÁRDENAS, Mrs. LOWEY, Mrs. TORRES of California, Mr. NADLER, Mr. CLAY, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. DEUTCH, Mr. CUMMINGS, Ms. JACKSON LEE, Mr. GRIJALVA, Mr. PANETTA, Ms. PINGREE, Mr. SERRANO, Mr. SEAN PATRICK MALONEY of New York, Mr. VELA, Ms. NORTON, Mr. MCEACHIN, Ms. SPEIER, Mr. KHANNA, Mr. JOHNSON of Georgia, Mr. SCHIFF, Mrs. DAVIS of California, Ms. MATSUI, Mrs. BEATTY, Mr. CORREA, Mr. MOULTON, Ms. ROYBAL-ALLARD, Ms. MCCOLLUM, Ms. DEGETTE, Ms. BONAMICI, Mrs. LAWRENCE, Mr. SWALWELL of California, Mr. DESAULNIER, Mr. LUJÁN, Mr. LANGEVIN, Ms. WILD, Mr. MCNERNEY, Mr. DEFazio, Mr. BEYER, Mr. HIGGINS of New York, Mr. PRICE of North Carolina, Mr. ESPAILLAT, Mr. RUPPERSBERGER, Ms. CLARKE of New York, Mr. HECK, Mr. CONNOLLY, Mr. PALLONE, Mr. LARSON of Connecticut, Mr. MORELLE, Mr. GREEN of Texas, Miss RICE of New York, Mr. CARTWRIGHT, Mr. KILMER, Mr. PERLMUTTER, Mr. SMITH of Washington, Ms. BASS, Mrs. NAPOLITANO, Mr. CARBAJAL, Ms. WILSON of Florida, Mr. COHEN, Ms. MENG, Mrs. DINGELL, Ms. BLUNT ROCHESTER, Ms. BARRAGÁN, Mr. DANNY K. DAVIS of Illinois, Ms. VELÁZQUEZ, Mr. LAWSON of Florida, Mr. GARAMENDI, Mr. SOTO, Mr. LARSEN of Washington, Mr. EVANS, Mr. VEASEY, Ms. ADAMS, Mr. SCHRADER, Mr. NORCROSS, Mr. SARBANES, Mr. BISHOP of Georgia, Mr.

RASKIN, Mr. HIMES, Mr. SHERMAN, Ms. KELLY of Illinois, Mr. O'HALLERAN, Mr. TAKANO, Ms. JUDY CHU of California, Ms. LEE of California, Mr. LEWIS, Mr. BLUMENAUER, Mr. QUIGLEY, Mr. LYNCH, Mr. PASCRELL, Ms. FUDGE, Mr. COSTA, Mr. RUIZ, Mr. GONZALEZ of Texas, Ms. ESHOO, Mrs. WATSON COLEMAN, Mr. MCGOVERN, Mr. CISNEROS, Mr. RUSH, Mr. COURTNEY, Mr. ENGEL, Ms. HAALAND, Ms. GABBARD, Mr. CRIST, Ms. OMAR, Mr. SMITH of New Jersey, Mr. LEVIN of Michigan, Mr. KRISHNAMOORTHY, Mr. KEATING, Mr. BROWN of Maryland, Mr. LAMB, Ms. KUSTER of New Hampshire, Mr. SIRES, Mr. YARMUTH, Mr. PETERS, Mr. KENNEDY, Ms. MOORE, Mr. BERA, Ms. JAYAPAL, Mrs. BUSTOS, Ms. CASTOR of Florida, Mr. CICILLINE, Mr. GALLEG0, Mr. VARGAS, Mr. PAPPAS, Ms. DEAN, Ms. OCASIO-CORTEZ, Ms. HILL of California, Mr. SCHNEIDER, Ms. SÁNCHEZ, Ms. SHALALA, Mr. CASE, Mrs. LEE of Nevada, Mr. ALLRED, Mr. AGUILAR, Mr. VISCLOSKEY, Mr. TED LIEU of California, Mr. COX of California, Mr. BUTTERFIELD, Ms. PLASKETT, Mrs. CRAIG, Mr. ROUDA, Mrs. TRAHAN, Mr. GOLDEN, Mrs. LURIA, Mr. BRINDISI, Mr. LOWENTHAL, Ms. TLAIB, Ms. WEXTON, Ms. UNDERWOOD, Ms. SCANLON, Ms. PORTER, Mr. NEGUSE, Mr. DELGADO, Ms. HOULAHAN, Ms. JOHNSON of Texas, Mrs. HAYES, Mr. LEVIN of California, Mr. RYAN, Ms. DAVIDS of Kansas, Ms. PRESSLEY, Ms. DELBENE, Ms. KENDRA S. HORN of Oklahoma, Ms. SEWELL of Alabama, Mr. GARCÍA of Illinois, Mr. THOMPSON of Mississippi, Ms. GARCIA of Texas, Mr. ROSE of New York, Mr. CARSON of Indiana, Mrs. MURPHY, Mr. CASTRO of Texas, Mr. GOMEZ, Mr. KILDEE, Mr. LOEBSACK, Mr. HORSFORD, Mr. JEFFRIES, Mr. PAYNE, Ms. TITUS, Mrs. KIRKPATRICK, Mr. VAN DREW, Mr. KIM, Ms. LOFGREN, Mr. THOMPSON of California, Ms. SCHRIER, Mr. CLEAVER, Mr. KIND, Mrs. AXNE, Ms. WATERS, Mr. CUELLAR, Mr. DOGGETT, Mr. MEEKS, Mr. NEAL, Mr. PETERSON, Mr. SUOZZI, Ms. SLOTKIN, Mr. CROW, Mr. MALINOWSKI, Mr. STANTON, Mr. GOTTHEIMER, Ms. FINKENAUER, Ms. MUCARSEL-POWELL, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. TRONE, Ms. SPANBERGER, Ms. SHERRILL, Mr. CASTEN of Illinois, Mr. MCADAMS, Ms. ESCOBAR, Mrs. MCBATH, Mrs. FLETCHER, Ms. TORRES SMALL of New Mexico, Ms. STEVENS, Mr. PHILLIPS, Mr. CUNNINGHAM, Mr. SAN NICOLAS, and Mr. HARDER of California) introduced the following bill; which was referred to the Committee on Education and Labor

MARCH 18, 2019

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on January 30, 2019]

A BILL

To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Paycheck Fairness Act”.*

5 **SEC. 2. FINDINGS.**

6 *Congress finds the following:*

7 (1) *Women have entered the workforce in record*
8 *numbers over the past 50 years.*

9 (2) *Despite the enactment of the Equal Pay Act*
10 *of 1963, many women continue to earn significantly*
11 *lower pay than men for equal work. These pay dis-*
12 *parities exist in both the private and governmental*
13 *sectors.*

14 (3) *In many instances, the pay disparities can*
15 *only be due to continued intentional discrimination*
16 *or the lingering effects of past discrimination. After*
17 *controlling for educational attainment, occupation,*
18 *industry, union status, race, ethnicity, and labor*
19 *force experience roughly 40 percent of the pay gap re-*
20 *mains unexplained.*

21 (4) *The existence of such pay disparities—*

22 (A) *depresses the wages of working families*
23 *who rely on the wages of all members of the fam-*
24 *ily to make ends meet;*

1 (B) undermines women's retirement secu-
2 rity, which is often based on earnings while in
3 the workforce;

4 (C) prevents women from realizing their full
5 economic potential, particularly in terms of
6 labor force participation and attachment;

7 (D) has been spread and perpetuated,
8 through commerce and the channels and instru-
9 mentalities of commerce, among the workers of
10 the several States;

11 (E) burdens commerce and the free flow of
12 goods in commerce;

13 (F) constitutes an unfair method of com-
14 petition in commerce;

15 (G) tends to cause labor disputes, as evi-
16 denced by the tens of thousands of charges filed
17 with the Equal Employment Opportunity Com-
18 mission against employers between 2010 and
19 2016;

20 (H) interferes with the orderly and fair
21 marketing of goods in commerce; and

22 (I) in many instances, may deprive workers
23 of equal protection on the basis of sex in viola-
24 tion of the 5th and 14th Amendments to the Con-
25 stitution.

1 (5)(A) *Artificial barriers to the elimination of*
2 *discrimination in the payment of wages on the basis*
3 *of sex continue to exist decades after the enactment of*
4 *the Fair Labor Standards Act of 1938 (29 U.S.C. 201*
5 *et seq.) and the Civil Rights Act of 1964 (42 U.S.C.*
6 *2000a et seq.).*

7 (B) *These barriers have resulted, in significant*
8 *part, because the Equal Pay Act of 1963 has not*
9 *worked as Congress originally intended. Improve-*
10 *ments and modifications to the law are necessary to*
11 *ensure that the Act provides effective protection to*
12 *those subject to pay discrimination on the basis of*
13 *their sex.*

14 (C) *Elimination of such barriers would have*
15 *positive effects, including—*

16 (i) *providing a solution to problems in the*
17 *economy created by unfair pay disparities;*

18 (ii) *substantially reducing the number of*
19 *working women earning unfairly low wages,*
20 *thereby reducing the dependence on public assist-*
21 *ance;*

22 (iii) *promoting stable families by enabling*
23 *all family members to earn a fair rate of pay;*

24 (iv) *remedying the effects of past discrimi-*
25 *nation on the basis of sex and ensuring that in*

1 *the future workers are afforded equal protection*
2 *on the basis of sex; and*

3 *(v) ensuring equal protection pursuant to*
4 *Congress' power to enforce the 5th and 14th*
5 *Amendments to the Constitution.*

6 *(6) The Department of Labor and the Equal*
7 *Employment Opportunity Commission carry out*
8 *functions to help ensure that women receive equal pay*
9 *for equal work.*

10 *(7) The Department of Labor is responsible for—*

11 *(A) collecting and making publicly avail-*
12 *able information about women's pay;*

13 *(B) ensuring that companies receiving Fed-*
14 *eral contracts comply with anti-discrimination*
15 *affirmative action requirements of Executive*
16 *Order 11246 (relating to equal employment op-*
17 *portunity);*

18 *(C) disseminating information about wom-*
19 *en's rights in the workplace;*

20 *(D) helping women who have been victims*
21 *of pay discrimination obtain a remedy; and*

22 *(E) investigating and prosecuting systemic*
23 *gender based pay discrimination involving gov-*
24 *ernment contractors.*

1 (8) *The Equal Employment Opportunity Com-*
 2 *mission is the primary enforcement agency for claims*
 3 *made under the Equal Pay Act of 1963, and issues*
 4 *regulations and guidance on appropriate interpreta-*
 5 *tions of the law.*

6 (9) *Vigorous implementation by the Department*
 7 *of Labor and the Equal Employment Opportunity*
 8 *Commission, increased information as a result of the*
 9 *amendments made by this Act, wage data, and more*
 10 *effective remedies, will ensure that women are better*
 11 *able to recognize and enforce their rights.*

12 (10) *Certain employers have already made great*
 13 *strides in eradicating unfair pay disparities in the*
 14 *workplace and their achievements should be recog-*
 15 *nized.*

16 **SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**
 17 **QUIREMENTS.**

18 (a) *BONA FIDE FACTOR DEFENSE AND MODIFICATION*
 19 *OF SAME ESTABLISHMENT REQUIREMENT.*—Section
 20 *6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.*
 21 *206(d)(1)) is amended—*

22 (1) *by striking “No employer having” and in-*
 23 *serting “(A) No employer having”;*

1 (2) by striking “any other factor other than sex”
2 and inserting “a bona fide factor other than sex, such
3 as education, training, or experience”; and

4 (3) by inserting at the end the following:

5 “(B) The bona fide factor defense described in subpara-
6 graph (A)(iv) shall apply only if the employer demonstrates
7 that such factor (i) is not based upon or derived from a
8 sex-based differential in compensation; (ii) is job-related
9 with respect to the position in question; (iii) is consistent
10 with business necessity; and (iv) accounts for the entire dif-
11 ferential in compensation at issue. Such defense shall not
12 apply where the employee demonstrates that an alternative
13 employment practice exists that would serve the same busi-
14 ness purpose without producing such differential and that
15 the employer has refused to adopt such alternative practice.

16 “(C) For purposes of subparagraph (A), employees
17 shall be deemed to work in the same establishment if the
18 employees work for the same employer at workplaces located
19 in the same county or similar political subdivision of a
20 State. The preceding sentence shall not be construed as lim-
21 iting broader applications of the term ‘establishment’ con-
22 sistent with rules prescribed or guidance issued by the
23 Equal Employment Opportunity Commission.”.

1 (b) *NONRETALIATION PROVISION.*—Section 15 of the
2 *Fair Labor Standards Act of 1938* (29 U.S.C. 215) is
3 *amended—*

4 (1) *in subsection (a)—*

5 (A) *in paragraph (3), by striking “employee*
6 *has filed” and all that follows and inserting*
7 *“employee—*

8 *“(A) has made a charge or filed any com-*
9 *plaint or instituted or caused to be instituted*
10 *any investigation, proceeding, hearing, or action*
11 *under or related to this Act, including an inves-*
12 *tigation conducted by the employer, or has testi-*
13 *fied or is planning to testify or has assisted or*
14 *participated in any manner in any such inves-*
15 *tigation, proceeding, hearing or action, or has*
16 *served or is planning to serve on an industry*
17 *committee; or*

18 *“(B) has inquired about, discussed, or dis-*
19 *closed the wages of the employee or another em-*
20 *ployee;”;*

21 (B) *in paragraph (5), by striking the period*
22 *at the end and inserting “; or”; and*

23 (C) *by adding at the end the following:*

1 “(6) to require an employee to sign a contract or
 2 waiver that would prohibit the employee from dis-
 3 closing information about the employee’s wages.”; and
 4 (2) by adding at the end the following:

5 “(c) Subsection (a)(3)(B) shall not apply to instances
 6 in which an employee who has access to the wage informa-
 7 tion of other employees as a part of such employee’s essen-
 8 tial job functions discloses the wages of such other employees
 9 to individuals who do not otherwise have access to such in-
 10 formation, unless such disclosure is in response to a com-
 11 plaint or charge or in furtherance of an investigation, pro-
 12 ceeding, hearing, or action under section 6(d), including an
 13 investigation conducted by the employer. Nothing in this
 14 subsection shall be construed to limit the rights of an em-
 15 ployee provided under any other provision of law.”.

16 (c) *ENHANCED PENALTIES*.—Section 16(b) of the Fair
 17 Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amend-
 18 ed—

19 (1) by inserting after the first sentence the fol-
 20 lowing: “Any employer who violates section 6(d) shall
 21 additionally be liable for such compensatory damages,
 22 or, where the employee demonstrates that the em-
 23 ployer acted with malice or reckless indifference, pu-
 24 nitive damages as may be appropriate, except that

1 *the United States shall not be liable for punitive dam-*
 2 *ages.”;*

3 (2) *in the sentence beginning “An action to”, by*
 4 *striking “the preceding sentences” and inserting “any*
 5 *of the preceding sentences of this subsection”;*

6 (3) *in the sentence beginning “No employees*
 7 *shall”, by striking “No employees” and inserting*
 8 *“Except with respect to class actions brought to en-*
 9 *force section 6(d), no employee”;*

10 (4) *by inserting after the sentence referred to in*
 11 *paragraph (3), the following: “Notwithstanding any*
 12 *other provision of Federal law, any action brought to*
 13 *enforce section 6(d) may be maintained as a class ac-*
 14 *tion as provided by the Federal Rules of Civil Proce-*
 15 *dure.”; and*

16 (5) *in the sentence beginning “The court in”—*

17 (A) *by striking “in such action” and insert-*
 18 *ing “in any action brought to recover the liabil-*
 19 *ity prescribed in any of the preceding sentences*
 20 *of this subsection”; and*

21 (B) *by inserting before the period the fol-*
 22 *lowing: “, including expert fees”.*

23 (d) *ACTION BY SECRETARY.—Section 16(c) of the Fair*
 24 *Labor Standards Act of 1938 (29 U.S.C. 216(c)) is amend-*
 25 *ed—*

1 (1) *in the first sentence—*

2 (A) *by inserting “or, in the case of a viola-*
3 *tion of section 6(d), additional compensatory or*
4 *punitive damages, as described in subsection*
5 *(b),” before “and the agreement”; and*

6 (B) *by inserting before the period the fol-*
7 *lowing: “, or such compensatory or punitive*
8 *damages, as appropriate”;*

9 (2) *in the second sentence, by inserting before the*
10 *period the following: “and, in the case of a violation*
11 *of section 6(d), additional compensatory or punitive*
12 *damages, as described in subsection (b)”;*

13 (3) *in the third sentence, by striking “the first*
14 *sentence” and inserting “the first or second sentence”;*
15 *and*

16 (4) *in the sixth sentence—*

17 (A) *by striking “commenced in the case”*
18 *and inserting “commenced—*
19 *“(1) in the case”;*

20 (B) *by striking the period and inserting “;*
21 *or”;* *and*

22 (C) *by adding at the end the following:*

23 *“(2) in the case of a class action brought to en-*
24 *force section 6(d), on the date on which the individual*
25 *becomes a party plaintiff to the class action.”.*

1 **SEC. 4. TRAINING.**

2 *The Equal Employment Opportunity Commission and*
3 *the Office of Federal Contract Compliance Programs, sub-*
4 *ject to the availability of funds appropriated under section*
5 *11, shall provide training to Commission employees and af-*
6 *fected individuals and entities on matters involving dis-*
7 *crimination in the payment of wages.*

8 **SEC. 5. NEGOTIATION SKILLS TRAINING.**

9 *(a) PROGRAM AUTHORIZED.—*

10 *(1) IN GENERAL.—The Secretary of Labor, after*
11 *consultation with the Secretary of Education, is au-*
12 *thorized to establish and carry out a grant program.*

13 *(2) GRANTS.—In carrying out the program, the*
14 *Secretary of Labor may make grants on a competitive*
15 *basis to eligible entities to carry out negotiation skills*
16 *training programs for the purposes of addressing pay*
17 *disparities, including through outreach to women and*
18 *girls.*

19 *(3) ELIGIBLE ENTITIES.—To be eligible to re-*
20 *ceive a grant under this subsection, an entity shall be*
21 *a public agency, such as a State, a local government*
22 *in a metropolitan statistical area (as defined by the*
23 *Office of Management and Budget), a State edu-*
24 *cational agency, or a local educational agency, a pri-*
25 *vate nonprofit organization, or a community-based*
26 *organization.*

1 (4) *APPLICATION.*—*To be eligible to receive a*
2 *grant under this subsection, an entity shall submit an*
3 *application to the Secretary of Labor at such time, in*
4 *such manner, and containing such information as the*
5 *Secretary of Labor may require.*

6 (5) *USE OF FUNDS.*—*An entity that receives a*
7 *grant under this subsection shall use the funds made*
8 *available through the grant to carry out an effective*
9 *negotiation skills training program for the purposes*
10 *described in paragraph (2).*

11 (b) *INCORPORATING TRAINING INTO EXISTING PRO-*
12 *GRAMS.*—*The Secretary of Labor and the Secretary of Edu-*
13 *cation shall issue regulations or policy guidance that pro-*
14 *vides for integrating the negotiation skills training, to the*
15 *extent practicable, into programs authorized under—*

16 (1) *in the case of the Secretary of Education, the*
17 *Elementary and Secondary Education Act of 1965*
18 *(20 U.S.C. 6301 et seq.), the Carl D. Perkins Career*
19 *and Technical Education Act of 2006 (20 U.S.C.*
20 *2301 et seq.), the Higher Education Act of 1965 (20*
21 *U.S.C. 1001 et seq.), and other programs carried out*
22 *by the Department of Education that the Secretary of*
23 *Education determines to be appropriate; and*

24 (2) *in the case of the Secretary of Labor, the*
25 *Workforce Innovation and Opportunity Act (29*

1 U.S.C. 3101 et seq.), and other programs carried out
2 by the Department of Labor that the Secretary of
3 Labor determines to be appropriate.

4 (c) *REPORT*.—Not later than 18 months after the date
5 of enactment of this Act, and annually thereafter, the Sec-
6 retary of Labor, in consultation with the Secretary of Edu-
7 cation, shall prepare and submit to Congress a report de-
8 scribing the activities conducted under this section and
9 evaluating the effectiveness of such activities in achieving
10 the purposes of this section.

11 **SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.**

12 Not later than 18 months after the date of enactment
13 of this Act, and periodically thereafter, the Secretary of
14 Labor shall conduct studies and provide information to em-
15 ployers, labor organizations, and the general public con-
16 cerning the means available to eliminate pay disparities
17 between men and women, including—

18 (1) conducting and promoting research to de-
19 velop the means to correct expeditiously the conditions
20 leading to the pay disparities;

21 (2) publishing and otherwise making available to
22 employers, labor organizations, professional associa-
23 tions, educational institutions, the media, and the
24 general public the findings resulting from studies and

1 *other materials, relating to eliminating the pay dis-*
 2 *parities;*

3 *(3) sponsoring and assisting State, local, and*
 4 *community informational and educational programs;*

5 *(4) providing information to employers, labor*
 6 *organizations, professional associations, and other in-*
 7 *terested persons on the means of eliminating the pay*
 8 *disparities; and*

9 *(5) recognizing and promoting the achievements*
 10 *of employers, labor organizations, and professional*
 11 *associations that have worked to eliminate the pay*
 12 *disparities.*

13 **SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR**
 14 **PAY EQUITY IN THE WORKPLACE.**

15 *(a) IN GENERAL.—There is established the Secretary*
 16 *of Labor’s National Award for Pay Equity in the Work-*
 17 *place, which shall be awarded, on an annual basis, to an*
 18 *employer to encourage proactive efforts to comply with sec-*
 19 *tion 6(d) of the Fair Labor Standards Act of 1938 (29*
 20 *U.S.C. 206(d)), as amended by this Act.*

21 *(b) CRITERIA FOR QUALIFICATION.—The Secretary of*
 22 *Labor shall set criteria for receipt of the award, including*
 23 *a requirement that an employer has made substantial effort*
 24 *to eliminate pay disparities between men and women, and*
 25 *deserves special recognition as a consequence of such effort.*

1 *The Secretary shall establish procedures for the application*
 2 *and presentation of the award.*

3 (c) *BUSINESS.—In this section, the term “employer”*
 4 *includes—*

5 (1)(A) *a corporation, including a nonprofit cor-*
 6 *poration;*

7 (B) *a partnership;*

8 (C) *a professional association;*

9 (D) *a labor organization; and*

10 (E) *a business entity similar to an entity de-*
 11 *scribed in any of subparagraphs (A) through (D);*

12 (2) *an entity carrying out an education referral*
 13 *program, a training program, such as an apprentice-*
 14 *ship or management training program, or a similar*
 15 *program; and*

16 (3) *an entity carrying out a joint program,*
 17 *formed by a combination of any entities described in*
 18 *paragraph (1) or (2).*

19 **SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL**
 20 **EMPLOYMENT OPPORTUNITY COMMISSION.**

21 *Section 709 of the Civil Rights Act of 1964 (42 U.S.C.*
 22 *2000e–8) is amended by adding at the end the following:*

23 *“(f)(1) Not later than 18 months after the date of en-*
 24 *actment of this subsection, the Commission shall issue regu-*
 25 *lations to provide for the collection from employers of com-*

1 *pensation data and other employment-related data (includ-*
 2 *ing hiring, termination, and promotion data) disaggregated*
 3 *by the sex, race, and national origin of employees.*

4 “(2) *In carrying out paragraph (1), the Commission*
 5 *shall have as its primary consideration the most effective*
 6 *and efficient means for enhancing the enforcement of Fed-*
 7 *eral laws prohibiting pay discrimination. For this purpose,*
 8 *the Commission shall consider factors including the imposi-*
 9 *tion of burdens on employers, the frequency of required re-*
 10 *ports (including the size of employers required to prepare*
 11 *reports), appropriate protections for maintaining data con-*
 12 *fidentiality, and the most effective format to report such*
 13 *data.”.*

14 **SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**
 15 **PAY EQUITY DATA COLLECTION.**

16 (a) *BUREAU OF LABOR STATISTICS DATA COLLEC-*
 17 *TION.—The Commissioner of Labor Statistics shall con-*
 18 *tinue to collect data on women workers in the Current Em-*
 19 *ployment Statistics survey.*

20 (b) *OFFICE OF FEDERAL CONTRACT COMPLIANCE*
 21 *PROGRAMS INITIATIVES.—The Director of the Office of Fed-*
 22 *eral Contract Compliance Programs shall ensure that em-*
 23 *ployees of the Office—*

1 (1)(A) shall use the full range of investigatory
2 tools at the Office’s disposal, including pay grade
3 methodology;

4 (B) in considering evidence of possible compensa-
5 tion discrimination—

6 (i) shall not limit its consideration to a
7 small number of types of evidence; and

8 (ii) shall not limit its evaluation of the evi-
9 dence to a small number of methods of evalu-
10 ating the evidence; and

11 (C) shall not require a multiple regression anal-
12 ysis or anecdotal evidence for a compensation dis-
13 crimination case;

14 (2) for purposes of its investigative, compliance,
15 and enforcement activities, shall define “similarly sit-
16 uated employees” in a way that is consistent with
17 and not more stringent than the definition provided
18 in item 1 of subsection A of section 10–III of the
19 Equal Employment Opportunity Commission Com-
20 pliance Manual (2000), and shall consider only fac-
21 tors that the Office’s investigation reveals were used
22 in making compensation decisions; and

23 (3) shall implement a survey to collect compensa-
24 tion data and other employment-related data (includ-
25 ing hiring, termination, and promotion data) and

1 *designate not less than half of all nonconstruction*
 2 *contractor establishments each year to prepare and*
 3 *file such survey, and shall review and utilize the re-*
 4 *sponses to such survey to identify contractor establish-*
 5 *ments for further evaluation and for other enforce-*
 6 *ment purposes as appropriate.*

7 *(c) DEPARTMENT OF LABOR DISTRIBUTION OF WAGE*
 8 *DISCRIMINATION INFORMATION.—The Secretary of Labor*
 9 *shall make readily available (in print, on the Department*
 10 *of Labor website, and through any other forum that the De-*
 11 *partment may use to distribute compensation discrimina-*
 12 *tion information), accurate information on compensation*
 13 *discrimination, including statistics, explanations of em-*
 14 *ployee rights, historical analyses of such discrimination, in-*
 15 *structions for employers on compliance, and any other in-*
 16 *formation that will assist the public in understanding and*
 17 *addressing such discrimination.*

18 **SEC. 10. PROHIBITIONS RELATING TO PROSPECTIVE EM-**
 19 **PLOYEES' SALARY AND BENEFIT HISTORY.**

20 *(a) IN GENERAL.—The Fair Labor Standards Act of*
 21 *1938 (29 U.S.C. 201 et seq.) is amended by inserting after*
 22 *section 7 the following new section:*

1 **“SEC. 8. REQUIREMENTS AND PROHIBITIONS RELATING TO**
2 **WAGE, SALARY, AND BENEFIT HISTORY.**

3 “(a) *IN GENERAL.*—It shall be an unlawful practice
4 for an employer to—

5 “(1) *rely on the wage history of a prospective*
6 *employee in considering the prospective employee for*
7 *employment, including requiring that a prospective*
8 *employee’s prior wages satisfy minimum or max-*
9 *imum criteria as a condition of being considered for*
10 *employment;*

11 “(2) *rely on the wage history of a prospective*
12 *employee in determining the wages for such prospec-*
13 *tive employee, except that an employer may rely on*
14 *wage history if it is voluntarily provided by a pro-*
15 *spective employee, after the employer makes an offer*
16 *of employment with an offer of compensation to the*
17 *prospective employee, to support a wage higher than*
18 *the wage offered by the employer;*

19 “(3) *seek from a prospective employee or any*
20 *current or former employer the wage history of the*
21 *prospective employee, except that an employer may*
22 *seek to confirm prior wage information only after an*
23 *offer of employment with compensation has been*
24 *made to the prospective employee and the prospective*
25 *employee responds to the offer by providing prior*

1 *wage information to support a wage higher than that*
 2 *offered by the employer; or*

3 *“(4) discharge or in any other manner retaliate*
 4 *against any employee or prospective employee because*
 5 *the employee or prospective employee—*

6 *“(A) opposed any act or practice made un-*
 7 *lawful by this section; or*

8 *“(B) took an action for which discrimina-*
 9 *tion is forbidden under section 15(a)(3).*

10 *“(b) DEFINITION.—In this section, the term ‘wage his-*
 11 *tory’ means the wages paid to the prospective employee by*
 12 *the prospective employee’s current employer or previous em-*
 13 *ployer.’”.*

14 *(b) PENALTIES.—Section 16 of such Act (29 U.S.C.*
 15 *216) is amended by adding at the end the following new*
 16 *subsection:*

17 *“(f)(1) Any person who violates the provisions of sec-*
 18 *tion 8 shall—*

19 *“(A) be subject to a civil penalty of \$5,000 for*
 20 *a first offense, increased by an additional \$1,000 for*
 21 *each subsequent offense, not to exceed \$10,000; and*

22 *“(B) be liable to each employee or prospective*
 23 *employee who was the subject of the violation for spe-*
 24 *cial damages not to exceed \$10,000 plus attorneys’*

1 *fees, and shall be subject to such injunctive relief as*
 2 *may be appropriate.*

3 *“(2) An action to recover the liability described in*
 4 *paragraph (1)(B) may be maintained against any em-*
 5 *ployer (including a public agency) in any Federal or State*
 6 *court of competent jurisdiction by any one or more employ-*
 7 *ees or prospective employees for and on behalf of—*

8 *“(A) the employees or prospective employees; and*

9 *“(B) other employees or prospective employees*
 10 *similarly situated.”.*

11 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

12 *(a) AUTHORIZATION OF APPROPRIATIONS.—There are*
 13 *authorized to be appropriated such sums as may be nec-*
 14 *essary to carry out this Act.*

15 *(b) PROHIBITION ON EARMARKS.—None of the funds*
 16 *appropriated pursuant to subsection (a) for purposes of the*
 17 *grant program in section 5 of this Act may be used for*
 18 *a congressional earmark as defined in clause 9(e) of rule*
 19 *XXI of the Rules of the House of Representatives.*

20 **SEC. 12. SMALL BUSINESS ASSISTANCE.**

21 *(a) EFFECTIVE DATE.—This Act and the amendments*
 22 *made by this Act shall take effect on the date that is 6*
 23 *months after the date of enactment of this Act.*

24 *(b) TECHNICAL ASSISTANCE MATERIALS.—The Sec-*
 25 *retary of Labor and the Commissioner of the Equal Em-*

1 *ployment Opportunity Commission shall jointly develop*
 2 *technical assistance material to assist small enterprises in*
 3 *complying with the requirements of this Act and the amend-*
 4 *ments made by this Act.*

5 *(c) SMALL BUSINESSES.—A small enterprise shall be*
 6 *exempt from the provisions of this Act, and the amendments*
 7 *made by this Act, to the same extent that such enterprise*
 8 *is exempt from the requirements of the Fair Labor Stand-*
 9 *ards Act of 1938 (29 U.S.C. 201 et seq.) pursuant to clauses*
 10 *(i) and (ii) of section 3(s)(1)(A) of such Act (29 U.S.C.*
 11 *203(s)(1)(A)).*

12 **SEC. 13. RULE OF CONSTRUCTION.**

13 *Nothing in this Act, or in any amendments made by*
 14 *this Act, shall affect the obligation of employers and em-*
 15 *ployees to fully comply with all applicable immigration*
 16 *laws, including being subject to any penalties, fines, or*
 17 *other sanctions.*

18 **SEC. 14. SEVERABILITY.**

19 *If any provision of this Act, an amendment made by*
 20 *this Act, or the application of that provision or amendment*
 21 *to particular persons or circumstances is held invalid or*
 22 *found to be unconstitutional, the remainder of this Act, the*
 23 *amendments made by this Act, or the application of that*
 24 *provision to other persons or circumstances shall not be af-*
 25 *ected.*

Union Calendar No. 6

116TH CONGRESS
1ST Session

H. R. 7

[Report No. 116-18]

A BILL

To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

MARCH 18, 2019

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed