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117TH CONGRESS
1ST SESSION

H. R. 7

[Report No. 117–13]

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 28, 2021

Ms. DELAURO (for herself, Ms. ADAMS, Mr. AGUILAR, Mr. ALLRED, Mr. AUCHINCLOSS, Mrs. AXNE, Ms. BARRAGÁN, Mrs. BEATTY, Mr. BERA, Mr. BEYER, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Ms. BOURDEAUX, Mr. BOWMAN, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BROWN, Ms. BROWNLEY, Ms. BUSH, Mrs. BUSTOS, Mr. BUTTERFIELD, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARSON, Mr. CARTWRIGHT, Mr. CASE, Mr. CASTEN, Ms. CASTOR of Florida, Mr. CASTRO of Texas, Ms. CHU, Mr. CICILLINE, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. CLEAVER, Mr. CLYBURN, Mr. COHEN, Mr. CONNOLLY, Mr. COOPER, Mr. CORREA, Mr. COSTA, Mr. COURTNEY, Ms. CRAIG, Mr. CROW, Mr. CUELLAR, Ms. DAVIDS of Kansas, Mr. DANNY K. DAVIS of Illinois, Ms. DEAN, Mr. DEFazio, Ms. DEGETTE, Ms. DELBENE, Mr. DELGADO, Mrs. DEMINGS, Mr. DESAULNIER, Mr. DEUTCH, Mrs. DINGELL, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. DOGGETT, Ms. ESCOBAR, Ms. ESHOO, Mr. ESPAILLAT, Mr. EVANS, Mrs. FLETCHER, Mr. FOSTER, Ms. LOIS FRANKEL of Florida, Mr. GALLEGO, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Ms. GARCIA of Texas, Mr. GOLDEN, Mr. GOMEZ, Mr. VICENTE GONZALEZ of Texas, Mr. GOTTHEIMER, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. HARDER of California, Mr. HASTINGS, Mrs. HAYES, Mr. HIGGINS of New York, Mr. HIMES, Mr. HORSFORD, Ms. HOULAHAN, Mr. HOYER, Mr. HUFFMAN, Ms. JACKSON LEE, Ms. JACOBS of California, Ms. JAYAPAL, Mr. JEFFRIES, Ms. JOHNSON of Texas, Mr. JOHNSON of Georgia, Mr. JONES, Mr. KAHELE, Ms. KAPTUR, Mr. KEATING, Ms. KELLY of Illinois, Mr. KHANNA, Mr. KILDEE, Mr. KILMER, Mr. KIM of New Jersey, Mr. KIND, Mrs. KIRKPATRICK, Mr. KRISHNAMOORTHY, Ms. KUSTER, Mr. LAMB, Mr. LANGEVIN, Mr. LARSEN of Washington, Mr. LARSON of Connecticut,

Mrs. LAWRENCE, Mr. LAWSON of Florida, Ms. LEE of California, Mrs. LEE of Nevada, Ms. LEGER FERNANDEZ, Mr. LEVIN of Michigan, Mr. LEVIN of California, Mr. LIEU, Ms. LOFGREN, Mr. LOWENTHAL, Mrs. LURIA, Mr. LYNCH, Mr. MALINOWSKI, Mrs. CAROLYN B. MALONEY of New York, Mr. SEAN PATRICK MALONEY of New York, Ms. MANNING, Ms. MATSUI, Mrs. MCBATH, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCGOVERN, Mr. MCNERNEY, Mr. MEEKS, Ms. MENG, Mr. MFUME, Ms. MOORE of Wisconsin, Mr. MORELLE, Mr. MOULTON, Mrs. MURPHY of Florida, Mr. MRVAN, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEGUSE, Mr. NEAL, Ms. NEWMAN, Mr. NORCROSS, Ms. NORTON, Ms. OCASIO-CORTEZ, Mr. O'HALLERAN, Ms. OMAR, Mr. PALLONE, Mr. PANETTA, Mr. PAPPAS, Mr. PASCRELL, Mr. PAYNE, Ms. PELOSI, Mr. PERLMUTTER, Mr. PETERS, Mr. PHILLIPS, Ms. PINGREE, Ms. PLASKETT, Mr. POCAN, Ms. PORTER, Ms. PRESSLEY, Mr. PRICE of North Carolina, Mr. QUIGLEY, Mr. RASKIN, Miss RICE of New York, Ms. ROSS, Ms. ROYBAL-ALLARD, Mr. RUIZ, Mr. RUPPERSBERGER, Mr. RUSH, Mr. RYAN, Mr. SABLAN, Mr. SAN NICOLAS, Ms. SÁNCHEZ, Mr. SARBANES, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCHNEIDER, Mr. SCHRADER, Ms. SCHRIER, Mr. DAVID SCOTT of Georgia, Mr. SCOTT of Virginia, Ms. SEWELL, Mr. SHERMAN, Ms. SHERRILL, Mr. SIRES, Ms. SLOTKIN, Mr. SMITH of Washington, Mr. SOTO, Ms. SPANBERGER, Ms. SPEIER, Mr. STANTON, Ms. STEVENS, Ms. STRICKLAND, Mr. SUOZZI, Mr. SWALWELL, Mr. TAKANO, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Ms. TITUS, Ms. TLAIB, Mr. TONKO, Mrs. TORRES of California, Mr. TORRES of New York, Mrs. TRAHAN, Mr. TRONE, Ms. UNDERWOOD, Mr. VARGAS, Mr. VEASEY, Mr. VELA, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WEXTON, Ms. WILD, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, Mr. YARMUTH, Mr. SMITH of New Jersey, Mr. FITZPATRICK, Mr. CRIST, and Ms. BASS) introduced the following bill; which was referred to the Committee on Education and Labor

APRIL 5, 2021

Additional sponsor: Mr. VAN DREW

APRIL 5, 2021

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 28, 2021]

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. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**
6 **QUIREMENTS.**

7 *(a) DEFINITIONS.—Section 3 of the Fair Labor Stand-*
8 *ards Act of 1938 (29 U.S.C. 203) is amended by adding*
9 *at the end the following:*

10 *“(z) ‘Sex’ includes—*

11 *“(1) a sex stereotype;*

12 *“(2) pregnancy, childbirth, or a related medical*
13 *condition;*

14 *“(3) sexual orientation or gender identity; and*

15 *“(4) sex characteristics, including intersex traits.*

16 *“(aa) ‘Sexual orientation’ includes homosexuality, het-*
17 *erosexuality, and bisexuality.*

18 *“(bb) ‘Gender identity’ means the gender-related iden-*
19 *tity, appearance, mannerisms, or other gender-related char-*
20 *acteristics of an individual, regardless of the individual’s*
21 *designated sex at birth.”.*

22 *(b) BONA FIDE FACTOR DEFENSE AND MODIFICATION*
23 *OF SAME ESTABLISHMENT REQUIREMENT.—Section*
24 *6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.*
25 *206(d)(1)) is amended—*

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

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

6 (3) *by inserting at the end the following:*

7 “(B) *The bona fide factor defense described in*
8 *subparagraph (A)(iv) shall apply only if the employer*
9 *demonstrates that such factor (i) is not based upon or*
10 *derived from a sex-based differential in compensation;*
11 *(ii) is job-related with respect to the position in ques-*
12 *tion; (iii) is consistent with business necessity; and*
13 *(iv) accounts for the entire differential in compensa-*
14 *tion at issue. Such defense shall not apply where the*
15 *employee demonstrates that an alternative employ-*
16 *ment practice exists that would serve the same busi-*
17 *ness purpose without producing such differential and*
18 *that the employer has refused to adopt such alter-*
19 *native practice.*

20 “(C) *For purposes of subparagraph (A), employ-*
21 *ees shall be deemed to work in the same establishment*
22 *if the employees work for the same employer at work-*
23 *places located in the same county or similar political*
24 *subdivision of a State. The preceding sentence shall*
25 *not be construed as limiting broader applications of*

1 *the term ‘establishment’ consistent with rules pre-*
2 *scribed or guidance issued by the Equal Employment*
3 *Opportunity Commission.”.*

4 *(c) NONRETALIATION PROVISION.—Section 15 of the*
5 *Fair Labor Standards Act of 1938 (29 U.S.C. 215) is*
6 *amended—*

7 *(1) in subsection (a)—*

8 *(A) in paragraph (3), by striking “employee*
9 *has filed” and all that follows and inserting*
10 *“employee—*

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

21 *“(B) has opposed any practice made unlaw-*
22 *ful by this Act; or*

23 *“(C) has inquired about, discussed, or dis-*
24 *closed the wages of the employee or another em-*
25 *ployee (such as by inquiring or discussing with*

1 *the employer why the wages of the employee are*
2 *set at a certain rate or salary);”;*

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

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

6 “*(6) to require an employee to sign a contract or*
7 *waiver that would prohibit the employee from dis-*
8 *closing information about the employee’s wages.”; and*

9 *(2) by adding at the end the following:*

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

21 *(d) ENHANCED PENALTIES.—Section 16(b) of the Fair*
22 *Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amend-*
23 *ed—*

24 *(1) by inserting after the first sentence the fol-*
25 *lowing: “Any employer who violates section 6(d), or*

1 *who violates the provisions of section 15(a)(3) in rela-*
2 *tion to a violation of section 6(d), shall additionally*
3 *be liable for such compensatory damages, or, where*
4 *the employee demonstrates that the employer acted*
5 *with malice or reckless indifference, punitive damages*
6 *as may be appropriate, except that the United States*
7 *shall not be liable for punitive damages.”;*

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

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

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

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

22 (A) *by striking “in such action” and insert-*
23 *ing “in any action brought to recover the liabil-*
24 *ity prescribed in any of the preceding sentences*
25 *of this subsection”;* and

1 (B) by inserting before the period the fol-
2 lowing: “, including expert fees”.

3 (e) *ACTION BY THE SECRETARY*.—Section 16(c) of the
4 *Fair Labor Standards Act of 1938 (29 U.S.C. 216(c))* is
5 amended—

6 (1) in the first sentence—

7 (A) by inserting “or, in the case of a viola-
8 tion of section 6(d), additional compensatory or
9 punitive damages, as described in subsection
10 (b),” before “and the agreement”; and

11 (B) by inserting before the period the fol-
12 lowing: “, or such compensatory or punitive
13 damages, as appropriate”;

14 (2) in the second sentence, by inserting before the
15 period the following: “and, in the case of a violation
16 of section 6(d), additional compensatory or punitive
17 damages, as described in subsection (b)”;

18 (3) in the third sentence, by striking “the first
19 sentence” and inserting “the first or second sentence”;
20 and

21 (4) in the sixth sentence—

22 (A) by striking “commenced in the case”
23 and inserting “commenced—
24 “(1) in the case”;

1 (B) by striking the period and inserting “;
2 or”; and

3 (C) by adding at the end the following:

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

7 (f) *JOINT ENFORCEMENT AUTHORITY.*—

8 (1) *IN GENERAL.*—Notwithstanding section 1 of
9 *Reorganization Plan No. 1 of 1978 (92 Stat. 3781; 5*
10 *U.S.C. App.) and any other provision of law, the Sec-*
11 *retary of Labor, acting through the Office of Federal*
12 *Contract Compliance Programs, and the Equal Op-*
13 *portunity Employment Commission shall jointly*
14 *carry out the functions and authorities described in*
15 *such section and any other provision of law to enforce*
16 *and administer the provisions of section 6(d) of the*
17 *Fair Labor Standards Act of 1938 (29 U.S.C. 206(d))*
18 *with respect to Federal contractors, Federal sub-*
19 *contractors, and federally-assisted construction con-*
20 *tractors, within the jurisdiction of the Office of Fed-*
21 *eral Contract Compliance Programs under Executive*
22 *Order 11246 (42 U.S.C. 2000e note; relating to equal*
23 *employment opportunity) or a successor Executive*
24 *Order.*

1 (2) *COORDINATION.*—*The Equal Opportunity*
2 *Employment Commission and the Secretary of Labor*
3 *shall establish such coordinating mechanisms as nec-*
4 *essary to carry out the joint authority under para-*
5 *graph (1).*

6 **SEC. 3. TRAINING.**

7 *The Equal Employment Opportunity Commission and*
8 *the Secretary of Labor, acting through the Office of Federal*
9 *Contract Compliance Programs, subject to the availability*
10 *of funds appropriated under section 11, shall provide train-*
11 *ing to employees of the Commission and the Office of Fed-*
12 *eral Contract Compliance Programs and to affected indi-*
13 *viduals and entities on matters involving discrimination*
14 *in the payment of wages.*

15 **SEC. 4. NEGOTIATION SKILLS TRAINING.**

16 (a) *PROGRAM AUTHORIZED.*—

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

20 (2) *GRANTS.*—*In carrying out the program, the*
21 *Secretary of Labor may make grants on a competitive*
22 *basis to eligible entities to carry out negotiation skills*
23 *training programs for the purposes of addressing pay*
24 *disparities, including through outreach to women and*
25 *girls.*

1 (3) *ELIGIBLE ENTITIES.*—*To be eligible to re-*
2 *ceive a grant under this subsection, an entity shall be*
3 *a public agency, such as a State, a local government*
4 *in a metropolitan statistical area (as defined by the*
5 *Office of Management and Budget), a State edu-*
6 *cational agency, or a local educational agency, a pri-*
7 *vate nonprofit organization, or a community-based*
8 *organization.*

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

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

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

24 (1) *in the case of the Secretary of Education, the*
25 *Elementary and Secondary Education Act of 1965*

1 (20 U.S.C. 6301 *et seq.*), the Carl D. Perkins Career
2 and Technical Education Act of 2006 (20 U.S.C.
3 2301 *et seq.*), the Higher Education Act of 1965 (20
4 U.S.C. 1001 *et seq.*), and other programs carried out
5 by the Department of Education that the Secretary of
6 Education determines to be appropriate; and

7 (2) in the case of the Secretary of Labor, the
8 Workforce Innovation and Opportunity Act (29
9 U.S.C. 3101 *et seq.*), and other programs carried out
10 by the Department of Labor that the Secretary of
11 Labor determines to be appropriate.

12 (c) *REPORT.*—Not later than 18 months after the date
13 of enactment of this Act, and annually thereafter, the Sec-
14 retary of Labor, in consultation with the Secretary of Edu-
15 cation, shall prepare and submit to Congress a report de-
16 scribing the activities conducted under this section and
17 evaluating the effectiveness of such activities in achieving
18 the purposes of this section.

19 **SEC. 5. RESEARCH, EDUCATION, AND OUTREACH.**

20 (a) *IN GENERAL.*—Not later than 18 months after the
21 date of enactment of this Act, and periodically thereafter,
22 the Secretary of Labor shall conduct studies and provide
23 information to employers, labor organizations, and the gen-
24 eral public concerning the means available to eliminate pay
25 disparities between men and women (including women who

1 *are Asian American, Black or African-American, Hispanic*
2 *American or Latino, Native American or Alaska Native,*
3 *Native Hawaiian or Pacific Islander, and White Amer-*
4 *ican), including—*

5 *(1) conducting and promoting research to de-*
6 *velop the means to correct expeditiously the conditions*
7 *leading to the pay disparities, with specific attention*
8 *paid to women and girls from historically underrep-*
9 *resented and minority groups;*

10 *(2) publishing and otherwise making available to*
11 *employers, labor organizations, professional associa-*
12 *tions, educational institutions, the media, and the*
13 *general public the findings resulting from studies and*
14 *other materials, relating to eliminating the pay dis-*
15 *parities;*

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

18 *(4) providing information to employers, labor*
19 *organizations, professional associations, and other in-*
20 *terested persons on the means of eliminating the pay*
21 *disparities; and*

22 *(5) recognizing and promoting the achievements*
23 *of employers, labor organizations, and professional*
24 *associations that have worked to eliminate the pay*
25 *disparities.*

1 **(b) REPORT ON GENDER PAY GAP IN TEENAGE LABOR**
2 *FORCE.*—

3 **(1) REPORT REQUIRED.**—*Not later than one*
4 *year after the date of the enactment of this Act, the*
5 *Secretary of Labor, acting through the Director of the*
6 *Women’s Bureau and in coordination with the Com-*
7 *missioner of Labor Statistics, shall—*

8 **(A)** *submit to Congress a report on the gen-*
9 *der pay gap in the teenage labor force; and*

10 **(B)** *make the report available on a publicly*
11 *accessible website of the Department of Labor.*

12 **(2) ELEMENTS.**—*The report under subsection (a)*
13 *shall include the following:*

14 **(A)** *An examination of trends and potential*
15 *solutions relating to the teenage gender pay gap.*

16 **(B)** *An examination of how the teenage gen-*
17 *der pay gap potentially translates into greater*
18 *wage gaps in the overall labor force.*

19 **(C)** *An examination of overall lifetime earn-*
20 *ings and losses for informal and formal jobs for*
21 *women, including women of color.*

22 **(D)** *An examination of the teenage gender*
23 *pay gap, including a comparison of the average*
24 *amount earned by males and females, respec-*
25 *tively, in informal jobs, such as babysitting and*

1 *other freelance jobs, as well as formal jobs, such*
2 *as retail, restaurant, and customer service.*

3 *(E) A comparison of—*

4 *(i) the types of tasks typically per-*
5 *formed by women from the teenage years*
6 *through adulthood within certain informal*
7 *jobs, such as babysitting and other freelance*
8 *jobs, and formal jobs, such as retail, res-*
9 *taurant, and customer service; and*

10 *(ii) the types of tasks performed by*
11 *younger males in such positions.*

12 *(F) Interviews and surveys with workers*
13 *and employers relating to early gender-based pay*
14 *discrepancies.*

15 *(G) Recommendations for—*

16 *(i) addressing pay inequality for*
17 *women from the teenage years through*
18 *adulthood, including such women of color;*

19 *(ii) addressing any disadvantages ex-*
20 *perienced by young women with respect to*
21 *work experience and professional develop-*
22 *ment;*

23 *(iii) the development of standards and*
24 *best practices for workers and employees to*
25 *ensure better pay for young women and the*

1 *prevention of early inequalities in the work-*
2 *place; and*

3 *(iv) expanding awareness for teenage*
4 *girls on pay rates and employment rights*
5 *in order to reduce greater inequalities in the*
6 *overall labor force.*

7 **SEC. 6. ESTABLISHMENT OF THE NATIONAL AWARD FOR**
8 **PAY EQUITY IN THE WORKPLACE.**

9 *(a) IN GENERAL.—There is established the National*
10 *Award for Pay Equity in the Workplace, which shall be*
11 *awarded by the Secretary of Labor in consultation with the*
12 *Equal Employment Opportunity Commission, on an an-*
13 *nual basis, to an employer to encourage proactive efforts*
14 *to comply with section 6(d) of the Fair Labor Standards*
15 *Act of 1938 (29 U.S.C. 206(d)), as amended by this Act.*

16 *(b) CRITERIA FOR QUALIFICATION.—The Secretary of*
17 *Labor, in consultation with the Equal Employment Oppor-*
18 *tunity Commission, shall—*

19 *(1) set criteria for receipt of the award, includ-*
20 *ing a requirement that an employer has made sub-*
21 *stantial effort to eliminate pay disparities between*
22 *men and women and deserves special recognition as*
23 *a consequence of such effort; and*

24 *(2) establish procedures for the application and*
25 *presentation of the award.*

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

3 (1)(A) *a corporation, including a nonprofit cor-*
4 *poration;*

5 (B) *a partnership;*

6 (C) *a professional association;*

7 (D) *a labor organization; and*

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

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

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

17 **SEC. 7. COLLECTION OF PAY INFORMATION BY THE EQUAL**
18 **EMPLOYMENT OPPORTUNITY COMMISSION.**

19 Section 709 of the Civil Rights Act of 1964 (42 U.S.C.
20 2000e–8) is amended by adding at the end the following:

21 “(f)(1) Not later than 18 months after the date of en-
22 actment of this subsection, the Commission shall provide for
23 the collection from employers of compensation data and
24 other employment-related data (including hiring, termi-

1 *nation, and promotion data) disaggregated by the sex, race,*
2 *and national origin of employees.*

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

13 “(3)(A) *For each 12-month reporting period for an em-*
14 *ployer, the compensation data collected under paragraph*
15 *(1) shall include, for each range of taxable compensation*
16 *described in subparagraph (B), disaggregated by the cat-*
17 *egories described in subparagraph (E)—*

18 “(i) *the number of employees of the employer*
19 *who earn taxable compensation in an amount that*
20 *falls within such taxable compensation range; and*

21 “(ii) *the total number of hours worked by such*
22 *employees.*

23 “(B) *Subject to adjustment under subparagraph (C),*
24 *the taxable compensation ranges described in this subpara-*
25 *graph are as follows:*

- 1 “(i) Not more than \$19,239.
- 2 “(ii) Not less than \$19,240 and not more than
3 \$24,439.
- 4 “(iii) Not less than \$24,440 and not more than
5 \$30,679.
- 6 “(iv) Not less than \$30,680 and not more than
7 \$38,999.
- 8 “(v) Not less than \$39,000 and not more than
9 \$49,919.
- 10 “(vi) Not less than \$49,920 and not more than
11 \$62,919.
- 12 “(vii) Not less than \$62,920 and not more than
13 \$80,079.
- 14 “(viii) Not less than \$80,080 and not more than
15 \$101,919.
- 16 “(ix) Not less than \$101,920 and not more than
17 \$128,959.
- 18 “(x) Not less than \$128,960 and not more than
19 \$163,799.
- 20 “(xi) Not less than \$163,800 and not more than
21 \$207,999.
- 22 “(xii) Not less than \$208,000.
- 23 “(C) The Commission may adjust the taxable com-
24 pensation ranges under subparagraph (B)—

1 “(i) if the Commission determines that such ad-
2 justment is necessary to enhance enforcement of Fed-
3 eral laws prohibiting pay discrimination; or

4 “(ii) for inflation, in consultation with the Bu-
5 reau of Labor Statistics.

6 “(D) In collecting data described in subparagraph
7 (A)(ii), the Commission shall provide that, with respect to
8 an employee who the employer is not required to com-
9 pensate for overtime employment under section 7 of the Fair
10 Labor Standards Act of 1938 (29 U.S.C. 207), an employer
11 may report—

12 “(i) in the case of a full-time employee, that such
13 employee works 40 hours per week, and in the case of
14 a part-time employee, that such employee works 20
15 hours per week; or

16 “(ii) the actual number of hours worked by such
17 employee.

18 “(E) The categories described in this subparagraph
19 shall be determined by the Commission and shall include—

20 “(i) race;

21 “(ii) national origin;

22 “(iii) sex; and

23 “(iv) job categories, including the job categories
24 described in the instructions for the Equal Employ-
25 ment Opportunity Employer Information Report

1 *EEO-1, as in effect on the date of the enactment of*
2 *this subsection.*

3 *“(F) The Commission shall use the compensation data*
4 *collected under paragraph (1)—*

5 *“(i) to enhance—*

6 *“(I) the investigation of charges filed under*
7 *section 706 or section 6(d) of the Fair Labor*
8 *Standards Act of 1938 (29 U.S.C. 206(d)); and*

9 *“(II) the allocation of resources to inves-*
10 *tigate such charges; and*

11 *“(ii) for any other purpose that the Commission*
12 *determines appropriate.*

13 *“(G) The Commission shall annually make publicly*
14 *available aggregate compensation data collected under*
15 *paragraph (1) for the categories described in subparagraph*
16 *(E), disaggregated by industry, occupation, and core based*
17 *statistical area (as defined by the Office of Management and*
18 *Budget).*

19 *“(4) The compensation data under paragraph (1) shall*
20 *be collected from each employer that—*

21 *“(A) is a private employer that has 100 or more*
22 *employees, including such an employer that is a con-*
23 *tractor with the Federal Government, or a subcon-*
24 *tractor at any tier thereof; or*

25 *“(B) the Commission determines appropriate.”.*

1 **SEC. 8. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**
2 **PAY EQUITY DATA COLLECTION.**

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

7 (b) *OFFICE OF FEDERAL CONTRACT COMPLIANCE*
8 *PROGRAMS INITIATIVES.—The Director of the Office of Fed-*
9 *eral Contract Compliance Programs shall collect compensa-*
10 *tion data and other employment-related data (including,*
11 *hiring, termination, and promotion data) by demographics*
12 *and designate not less than half of all nonconstruction con-*
13 *tractors each year to prepare and file such data, and shall*
14 *review and utilize the responses to such data to identify*
15 *contractors for further evaluation and for other enforcement*
16 *purposes as appropriate.*

17 (c) *DEPARTMENT OF LABOR DISTRIBUTION OF WAGE*
18 *DISCRIMINATION INFORMATION.—The Secretary of Labor*
19 *shall make readily available (in print, on the Department*
20 *of Labor website, and through any other forum that the De-*
21 *partment may use to distribute compensation discrimina-*
22 *tion information), accurate information on compensation*
23 *discrimination, including statistics, explanations of em-*
24 *ployee rights, historical analyses of such discrimination, in-*
25 *structions for employers on compliance, and any other in-*

1 *formation that will assist the public in understanding and*
2 *addressing such discrimination.*

3 **SEC. 9. PROHIBITIONS RELATING TO PROSPECTIVE EM-**
4 **PLOYEES' SALARY AND BENEFIT HISTORY.**

5 *(a) IN GENERAL.—The Fair Labor Standards Act of*
6 *1938 (29 U.S.C. 201 et seq.) is amended by inserting after*
7 *section 7 the following new section:*

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

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

12 *“(1) rely on the wage history of a prospective*
13 *employee in considering the prospective employee for*
14 *employment, including requiring that a prospective*
15 *employee’s prior wages satisfy minimum or max-*
16 *imum criteria as a condition of being considered for*
17 *employment;*

18 *“(2) rely on the wage history of a prospective*
19 *employee in determining the wages for such prospec-*
20 *tive employee, except that an employer may rely on*
21 *wage history if it is voluntarily provided by a pro-*
22 *spective employee, after the employer makes an offer*
23 *of employment with an offer of compensation to the*
24 *prospective employee, to support a wage higher than*
25 *the wage offered by the employer;*

1 “(3) seek from a prospective employee or any
2 current or former employer the wage history of the
3 prospective employee, except that an employer may
4 seek to confirm prior wage information only after an
5 offer of employment with compensation has been
6 made to the prospective employee and the prospective
7 employee responds to the offer by providing prior
8 wage information to support a wage higher than that
9 offered by the employer; or

10 “(4) discharge or in any other manner retaliate
11 against any employee or prospective employee because
12 the employee or prospective employee—

13 “(A) opposed any act or practice made un-
14 lawful by this section; or

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

17 “(b) DEFINITION.—In this section, the term ‘wage his-
18 tory’ means the wages paid to the prospective employee by
19 the prospective employee’s current employer or previous em-
20 ployer.”.

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

24 “(f)(1) Any person who violates the provisions of sec-
25 tion 8 shall—

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

4 “(B) be liable to each employee or prospective
5 employee who was the subject of the violation for spe-
6 cial damages not to exceed \$10,000 plus attorneys’
7 fees, and shall be subject to such injunctive relief as
8 may be appropriate.

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

14 “(A) the employees or prospective employees; and

15 “(B) other employees or prospective employees
16 similarly situated.”.

17 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

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

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

1 **SEC. 11. SMALL BUSINESS ASSISTANCE.**

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

5 (b) *TECHNICAL ASSISTANCE MATERIALS.*—*The Sec-*
6 *retary of Labor and the Commissioner of the Equal Em-*
7 *ployment Opportunity Commission shall jointly develop*
8 *technical assistance material to assist small enterprises in*
9 *complying with the requirements of this Act and the amend-*
10 *ments made by this Act.*

11 (c) *SMALL BUSINESSES.*—*A small enterprise shall be*
12 *exempt from the provisions of this Act, and the amendments*
13 *made by this Act, to the same extent that such enterprise*
14 *is exempt from the requirements of the Fair Labor Stand-*
15 *ards Act of 1938 (29 U.S.C. 201 et seq.) pursuant to clauses*
16 *(i) and (ii) of section 3(s)(1)(A) of such Act (29 U.S.C.*
17 *203(s)(1)(A)).*

18 **SEC. 12. RULE OF CONSTRUCTION.**

19 *Nothing in this Act, or in any amendments made by*
20 *this Act, shall affect the obligation of employers and em-*
21 *ployees to fully comply with all applicable immigration*
22 *laws, including being subject to any penalties, fines, or*
23 *other sanctions.*

24 **SEC. 13. SEVERABILITY.**

25 *If any provision of this Act, an amendment made by*
26 *this Act, or the application of that provision or amendment*

1 *to particular persons or circumstances is held invalid or*
2 *found to be unconstitutional, the remainder of this Act, the*
3 *amendments made by this Act, or the application of that*
4 *provision to other persons or circumstances shall not be af-*
5 *ected.*

Union Calendar No. 2

117TH CONGRESS
1ST Session

H. R. 7

[Report No. 117-13]

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.

APRIL 5, 2021

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