

105TH CONGRESS
1ST SESSION

H. R. 1302

To amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 1997

Ms. NORTON (for herself, Mr. ABERCROMBIE, Mr. BROWN of California, Ms. BROWN of Florida, Ms. CHRISTIAN-GREEN, Mr. CONYERS, Mr. DAVIS of Illinois, Mr. DELLUMS, Mr. EVANS, Mr. FILNER, Mr. FROST, Mr. GONZALEZ, Mr. HILLIARD, Mr. HINCHEY, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. KENNELLY of Connecticut, Mrs. MALONEY of New York, Mr. MARTINEZ, Mr. McDERMOTT, Ms. McKINNEY, Mrs. MINK of Hawaii, Mrs. MORELLA, Mr. NADLER, Mr. OLVER, Mr. OWENS, Mr. PAYNE, Ms. PELOSI, Mr. SABO, Mr. SANDERS, Ms. VELÁZQUEZ, Ms. WATERS, Mr. SERRANO, Mrs. LOWEY, Mr. GEJDENSON, Mr. FOGLIETTA, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

A BILL

To amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, 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 AND REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fair Pay Act of 1997”.

1 (b) REFERENCE.—Whenever in this Act an amend-
2 ment or repeal is expressed in terms of an amendment
3 to, or repeal of, a section or other provision, the reference
4 shall be considered to be made to a section or other provi-
5 sion of the Fair Labor Standards Act of 1938.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Wage differentials exist between equivalent
9 jobs segregated by sex, race, and national origin in
10 Government employment and in industries engaged
11 in commerce or in the production of goods for com-
12 merce:

13 (2) The existence of such wage differentials—

14 (A) depresses wages and living standards
15 for employees necessary for their health and ef-
16 ficiency;

17 (B) prevents the maximum utilization of
18 the available labor resources;

19 (C) tends to cause labor disputes, thereby
20 burdening, affecting, and obstructing com-
21 merce;

22 (D) burdens commerce and the free flow of
23 goods in commerce; and

24 (E) constitutes an unfair method of com-
25 petition.

1 (3) Discrimination in hiring and promotion has
2 played a role in maintaining a segregated work
3 force.

4 (4) Many women and people of color work in
5 occupations dominated by individuals of their same
6 sex, race, and national origin.

7 (5)(A) A General Accounting Office analysis of
8 wages in the civil service of the State of Washington
9 found that in 1985 of the 44 jobs studied that paid
10 less than the average of all equivalent jobs, approxi-
11 mately 39 percent were female-dominated and ap-
12 proximately 16 percent were male dominated.

13 (B) A study of wages in Minnesota using 1990
14 Decennial Census data found that 75 percent of the
15 wage differential between white and non-white work-
16 ers was unexplained and may be a result of discrimi-
17 nation.

18 (6) Section 6(d) of the Fair Labor Standards
19 Act of 1938 prohibits discrimination in compensa-
20 tion for “equal work” on the basis of sex.

21 (7) Title VII of the Civil Rights Act of 1964
22 prohibits discrimination in compensation because of
23 race, color, religion, national origin, and sex. The
24 United States Supreme Court, in its decision in
25 County of Washington v. Gunther, 452 U.S. 161

1 (1981), held that title VII’s prohibition against dis-
2 crimination in compensation also applies to jobs
3 which do not constitute “equal work” as defined in
4 section 6(d) of the Fair Labor Standards Act of
5 1938. Decisions of lower courts, however, have dem-
6 onstrated that further clarification of existing legis-
7 lation is necessary in order effectively to carry out
8 the intent of Congress to implement the Supreme
9 Court’s holding in its *Gunther* decision.

10 (8) Artificial barriers to the elimination of dis-
11 crimination in compensation based upon sex, race,
12 and national origin continue to exist more than 3
13 decades after the passage of section 6(d) of the Fair
14 Labor Standards Act of 1938 and the Civil Rights
15 Act of 1964. Elimination of such barriers would
16 have positive effects, including—

17 (A) providing a solution to problems in the
18 economy created by discriminating wage dif-
19 ferentials;

20 (B) substantially reducing the number of
21 working women and people of color earning low
22 wages, thereby reducing the dependence on pub-
23 lic assistance; and

1 (C) promoting stable families by enabling
2 working family members to earn a fair rate of
3 pay.

4 **SEC. 3. EQUAL PAY FOR EQUIVALENT JOBS.**

5 (a) AMENDMENT.—Section 6 (29 U.S.C. 206) is
6 amended by adding at the end the following:

7 “(g)(1)(A) No employer having employees subject to
8 any provisions of this section shall discriminate between
9 its employees on the basis of sex, race, or national origin
10 by paying wages to employees or groups of employees at
11 a rate less than the rate at which the employer pays wages
12 to employees or groups of employees of the opposite sex
13 or different race or national origin for work in equivalent
14 jobs, except where such payment is made pursuant to a
15 seniority system, a merit system, or a system which meas-
16 ures earnings by quantity or quality of production.

17 “(B) An employer who is paying a wage rate differen-
18 tial in violation of subparagraph (A) shall not, in order
19 to comply with the provisions of such subparagraph, re-
20 duce the wage rate of any employee.

21 “(2) No labor organization or its agents representing
22 employees of an employer having employees subject to any
23 provision of this section shall cause or attempt to cause
24 such an employer to discriminate against an employee in
25 violation of paragraph (1)(A).

1 “(3) For purposes of administration and enforcement
2 of this subsection, any amounts owing to any employee
3 which have been withheld in violation of paragraph (1)(A)
4 shall be deemed to be unpaid minimum wages or unpaid
5 overtime compensation under this section or section 7.

6 “(4) As used in this subsection:

7 “(A) The term ‘labor organization’ means any
8 organization of any kind, or any agency or employee
9 representation committee or plan, in which employ-
10 ees participate and which exists for the purpose, in
11 whole or in part, of dealing with employers concern-
12 ing grievances, labor disputes, wages, rates of pay,
13 hours of employment, or conditions of work.

14 “(B) The term ‘equivalent jobs’ means jobs that
15 may be dissimilar, but whose requirements are
16 equivalent, when viewed as a composite of skills, ef-
17 fort, responsibility, and working conditions.”.

18 (b) CONFORMING AMENDMENT.—Section 13(a) (29
19 U.S.C. 213(a)) is amended in the matter before paragraph
20 (1) by striking “section 6(d)” and inserting “sections 6(d)
21 and 6(g)”.

22 **SEC. 4. PROHIBITED ACTS.**

23 Section 15(a) (29 U.S.C. 215(a)) is amended by
24 striking the period at the end of paragraph (5) and insert-

1 ing a semicolon and by adding after paragraph (5) the
2 following:

3 “(6) to discriminate against any individual be-
4 cause such individual has opposed any act or prac-
5 tice made unlawful by section 6(g) or because such
6 individual made a charge, testified, assisted, or par-
7 ticipated in any manner in an investigation, proceed-
8 ing, or hearing under section 6(g); or

9 “(7) to discharge or in any other manner dis-
10 criminate against, coerce, intimidate, threaten, or
11 interfere with any employee or any other person be-
12 cause the employee inquired about, disclosed, com-
13 pared, or otherwise discussed the employee’s wages
14 or the wages of any other employee, or because the
15 employee exercised, enjoyed, aided, or encouraged
16 any other person to exercise or enjoy any right
17 granted or protected by section 6(g).”.

18 **SEC. 5. REMEDIES.**

19 Section 16 (29 U.S.C. 216) is amended—

20 (1) by adding at the end the following:

21 “(f) In any action brought under this section for vio-
22 lation of section 6(g), the court shall, in addition to any
23 other remedies awarded to the prevailing plaintiff or plain-
24 tiffs, allow expert fees as part of the costs. Any such action

1 may be maintained as a class action as provided by the
2 Federal Rules of Civil Procedure.”;

3 (2) in subsection (b), by striking “section
4 15(a)(3)” each place it occurs and inserting “para-
5 graphs (3), (6), and (7) of section 15(a)”;

6 (3) in the fourth sentence of subsection (b), by
7 striking “No employees” and inserting “Except with
8 respect to class actions brought under subsection (f),
9 no employees”.

10 **SEC. 6. RECORDS.**

11 Section 11(c) (29 U.S.C. 211(c)) is amended by in-
12 serting “(1)” after “(c)” and by adding at the end the
13 following:

14 “(2)(A) Every employer subject to section 6(g) shall
15 preserve records which document and support the method,
16 system, calculations, and other bases used by the employer
17 in establishing, adjusting, and determining the wages paid
18 to the employees of the employer. Every employer subject
19 to section 6(g) shall preserve such records for such periods
20 of time and shall make such reports therefrom to the
21 Equal Employment Opportunity Commission as shall be
22 prescribed by the Equal Employment Opportunity Com-
23 mission by regulation or order as necessary or appropriate
24 for the enforcement of the provisions of section 6(g) or
25 any regulations promulgated thereunder.

1 “(B) Every employer subject to section 6(g) shall file
2 annually with the Equal Employment Opportunity Com-
3 mission a report signed by its president, treasurer, or cor-
4 responding principal officer containing information in
5 such detail as may be necessary accurately to disclose the
6 wage or salary rates paid to each classification, position,
7 job title, or other wage or salary group of employees em-
8 ployed by the employer, as well as the sex, race, and na-
9 tional origin of employees at each wage or salary level in
10 each classification, position, job title, or other wage or sal-
11 ary group. The report shall not contain the name of any
12 individual employee.

13 “(C) In order to carry out the purposes of this Act,
14 the contents of the reports filed with the Equal Employ-
15 ment Opportunity Commission pursuant to subparagraph
16 (B) shall be public information, and the Equal Employ-
17 ment Opportunity Commission may publish any informa-
18 tion and data which it obtains pursuant to the provisions
19 of subparagraph (B). The Equal Employment Oppor-
20 tunity Commission may use the information and data for
21 statistical and research purposes, and compile and publish
22 such studies, analyses, reports, and surveys based thereon
23 as it may deem appropriate.

24 “(D) In order to carry out the purposes of this Act
25 the Equal Employment Opportunity Commission shall by

1 regulation make reasonable provision for the inspection
2 and examination by any person of the information and
3 data contained in any report filed with it pursuant to sub-
4 paragraph (B).

5 “(E) The Equal Employment Opportunity Commis-
6 sion shall by regulation provide for the furnishing of copies
7 of reports filed with it pursuant to subparagraph (B) to
8 any person upon payment of a charge based upon the cost
9 of the service.

10 “(F) The Equal Employment Opportunity Commis-
11 sion shall issue rules and regulations prescribing the form
12 and content of reports required to be filed under subpara-
13 graph (B) and such other reasonable rules and regulations
14 as it may find necessary to prevent the circumvention or
15 evasion of such reporting requirements. In exercising its
16 authority under subparagraph (B), the Equal Employ-
17 ment Opportunity Commission may prescribe by general
18 rule simplified reports for employers for whom it finds
19 that by virtue of their size a detailed report would be un-
20 duly burdensome.”.

21 **SEC. 7. RESEARCH, EDUCATION, AND TECHNICAL ASSIST-**
22 **ANCE PROGRAM; REPORT TO CONGRESS.**

23 Section 4(d) (29 U.S.C. 204(d)) is amended by add-
24 ing at the end the following:

1 “(4) The Equal Employment Opportunity Commis-
2 sion shall undertake studies and provide information and
3 technical assistance to employers, labor organizations, and
4 the general public concerning effective means available to
5 implement the provisions of section 6(g) prohibiting wage
6 discrimination between employees performing work in
7 equivalent jobs on the basis of sex, race, or national origin.
8 Such studies, information, and technical assistance shall
9 be based upon and include reference to the declared policy
10 of such section to eliminate such discrimination. In order
11 to achieve the purposes of such section, the Equal Employ-
12 ment Opportunity Commission shall further carry on a
13 continuing program of research, education, and technical
14 assistance including—

15 “(A) undertaking and promoting research with
16 the intent of developing means to expeditiously cor-
17 rect the conditions leading to section 6(g);

18 “(B) publishing and otherwise making available
19 to employers, labor organizations, professional asso-
20 ciations, educational institutions, the various media
21 of communication, and the general public the find-
22 ings of studies and other materials for promoting
23 compliance with section 6(g);

24 “(C) sponsoring and assisting State and com-
25 munity informational and educational programs; and

1 “(D) providing technical assistance to employ-
2 ers, labor organizations, professional associations
3 and other interested persons on means of achieving
4 and maintaining compliance with the provisions of
5 section 6(g).

6 “(5) The report submitted annually by the Equal
7 Employment Opportunity Commission to Congress pursu-
8 ant to paragraph (1) shall include a separate evaluation
9 and appraisal regarding the implementation of section
10 6(g).”.

11 **SEC. 8. EFFECTIVE DATE.**

12 The amendments made by this Act shall take effect
13 upon the expiration of one year from the date of its
14 enactment.

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