

105TH CONGRESS
1ST SESSION

S. 71

To amend the Fair Labor Standards Act of 1938 and the Civil Rights Act of 1964 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 SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. DASCHLE (for himself, Mr. KERRY, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. REID, Mr. WYDEN, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mr. HARKIN, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Fair Labor Standards Act of 1938 and the Civil Rights Act of 1964 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
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

★(Star Print)

1 (1) Women have entered the workforce in
2 record numbers.

3 (2) Even in the 1990s, women earn signifi-
4 cantly lower pay than men for work on jobs that re-
5 quire equal skill, effort, and responsibility and that
6 are performed under similar working conditions.
7 These pay disparities exist in both the private and
8 governmental sectors. In many instances, the pay
9 disparities can only be due to continued intentional
10 discrimination or the lingering effects of past dis-
11 crimination.

12 (3) The existence of such pay disparities—

13 (A) depresses the wages of working fami-
14 lies who rely on the wages of all members of the
15 family to make ends meet;

16 (B) prevents the optimum utilization of
17 available labor resources;

18 (C) has been spread and perpetuated,
19 through commerce and the channels and instru-
20 mentalities of commerce, among the workers of
21 the several States;

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

24 (E) constitutes an unfair method of com-
25 petition in commerce;

1 (F) leads to labor disputes burdening and
2 obstructing commerce and the free flow of
3 goods in commerce;

4 (G) interferes with the orderly and fair
5 marketing of goods in commerce; and

6 (H) in many instances, may deprive work-
7 ers of equal protection on the basis of sex in
8 violation of the fifth and 14th amendments.

9 (4)(A) Artificial barriers to the elimination of
10 discrimination in the payment of wages on the basis
11 of sex continue to exist more than 3 decades after
12 the enactment of the Fair Labor Standards Act of
13 1938 (29 U.S.C. 201 et seq.) and the Civil Rights
14 Act of 1964 (42 U.S.C. 2000a et seq.).

15 (B) Elimination of such barriers would have
16 positive effects, including—

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

19 (ii) substantially reducing the number of
20 working women earning unfairly low wages,
21 thereby reducing the dependence on public as-
22 sistance; and

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

1 (iv) remedying the effects of past discrimi-
 2 nation on the basis of sex and ensuring that in
 3 the future workers are afforded equal protection
 4 on the basis of sex; and

5 (v) in the private sector, ensuring equal
 6 protection pursuant to Congress' power to en-
 7 force the fifth and 14th amendments.

8 (5) With increased information about the provi-
 9 sions added by the Equal Pay Act of 1963 and gen-
 10 eralized wage data, along with more effective rem-
 11 edies, women will be better able to recognize and en-
 12 force their rights to equal pay for work on jobs that
 13 require equal skill, effort, and responsibility and that
 14 are performed under similar working conditions.

15 (6) Certain employers have already made great
 16 strides in eradicating unfair pay disparities in the
 17 workplace and their achievements should be recog-
 18 nized.

19 **SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**
 20 **QUIREMENTS.**

21 (a) NONRETALIATION PROVISION.—Section 15(a)(3)
 22 of the Fair Labor Standards Act of 1938 (29 U.S.C.
 23 215(a)(3)) is amended—

24 (1) by striking “or has” each place it appears
 25 and inserting “has”; and

1 (2) by inserting before the semicolon the follow-
2 ing: “, or has inquired about, discussed, or otherwise
3 disclosed the wages of the employee or another em-
4 ployee”.

5 (b) ENHANCED PENALTIES.—Section 16(b) of such
6 Act (29 U.S.C. 216(b)) is amended—

7 (1) by inserting after the first sentence the fol-
8 lowing: “Any employer who violates section 6(d)
9 shall additionally be liable for such compensatory or
10 punitive damages as may be appropriate, except that
11 the United States shall not be liable for punitive
12 damages”;

13 (2) in the sentence beginning “An action to”,
14 by striking “either of the preceding sentences” and
15 inserting “any of the preceding sentences of this
16 subsection”;

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

21 (4) by inserting after such sentence the follow-
22 ing: “Notwithstanding any other provision of Fed-
23 eral law, any action brought to enforce section 6(d)
24 may be maintained as a class action as provided by
25 the Federal Rules of Civil Procedure.”; and

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

2 (A) by striking “in such action” and in-
3 serting “in any action brought to recover the li-
4 ability prescribed in any of the preceding sen-
5 tences of this subsection”; and

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

8 (c) ACTION BY SECRETARY.—Section 16(c) of such
9 Act (29 U.S.C. 216(c)) is amended—

10 (1) in the first sentence—

11 (A) by inserting “or, in the case of a viola-
12 tion of section 6(d), additional compensatory or
13 punitive damages,” before “and the agree-
14 ment”; and

15 (B) by inserting before the period the fol-
16 lowing: “, or such compensatory or punitive
17 damages, as appropriate”;

18 (2) in the second sentence, by inserting before
19 the period the following: “ and, in the case of a vio-
20 lation of section 6(d), additional compensatory or
21 punitive damages”;

22 (3) in the third sentence, by striking “the first
23 sentence” and inserting “the first or second sen-
24 tence”; and

1 (4) in the last sentence, by inserting after “in
 2 the complaint” the following: “or becomes a party
 3 plaintiff in a class action brought to enforce section
 4 6(d)”.

5 **SEC. 4. TRAINING.**

6 The Equal Employment Opportunity Commission
 7 and the Office of Federal Contract Compliance Programs,
 8 subject to the availability of funds appropriated under sec-
 9 tion 9(b), shall provide training to Commission employees
 10 and affected individuals and entities on matters involving
 11 discrimination in the payment of wages.

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

13 The Secretary of Labor shall conduct studies and
 14 provide information to employers, labor organizations, and
 15 the general public concerning the means available to elimi-
 16 nate pay disparities between men and women, including—

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

20 (2) publishing and otherwise making available
 21 to employers, labor organizations, professional asso-
 22 ciations, educational institutions, the media, and the
 23 general public the findings resulting from studies
 24 and other materials, relating to eliminating the pay
 25 disparities;

1 (3) sponsoring and assisting State and commu-
2 nity informational and educational programs;

3 (4) providing information to employers, labor
4 organizations, professional associations, and other
5 interested persons on the means of eliminating the
6 pay disparities;

7 (5) recognizing and promoting the achievements
8 of employers, labor organizations, and professional
9 associations that have worked to eliminate the pay
10 disparities; and

11 (6) convening a national summit to discuss, and
12 consider approaches for rectifying, the pay dispari-
13 ties.

14 **SEC. 6. TECHNICAL ASSISTANCE AND EMPLOYER RECOGNI-**
15 **TION PROGRAM.**

16 (a) GUIDELINES.—

17 (1) IN GENERAL.—The Secretary of Labor shall
18 develop guidelines to enable employers to evaluate
19 job categories based on objective criteria such as
20 educational requirements, skill requirements, inde-
21 pendence, working conditions, and responsibility, in-
22 cluding decisionmaking responsibility and de facto
23 supervisory responsibility.

24 (2) USE.—The guidelines developed under
25 paragraph (1) shall be designed to enable employers

1 voluntarily to compare wages paid for different jobs
2 to determine if the pay scales involved adequately
3 and fairly reflect the educational requirements, skill
4 requirements, independence, working conditions, and
5 responsibility for each such job with the goal of
6 eliminating unfair pay disparities between occupa-
7 tions traditionally dominated by men or women.

8 (3) PUBLICATION.—The guidelines shall be de-
9 veloped under paragraph (1) and published in the
10 Federal Register not later than 180 days after the
11 date of enactment of this Act.

12 (b) EMPLOYER RECOGNITION.—

13 (1) PURPOSE.—It is the purpose of this sub-
14 section to emphasize the importance of, encourage
15 the improvement of, and recognize the excellence of
16 employer efforts to pay wages to women that reflect
17 the real value of the contributions of such women to
18 the workplace.

19 (2) IN GENERAL.—To carry out the purpose of
20 this subsection, the Secretary of Labor shall estab-
21 lish a program under which the Secretary shall pro-
22 vide for the recognition of employers who, pursuant
23 to a voluntary job evaluation conducted by the em-
24 ployer, adjust their wage scales (such adjustments
25 shall not include the lowering of wages paid to men)

1 using the guidelines developed under subsection (a)
 2 to ensure that women are paid fairly in comparison
 3 to men.

4 (3) TECHNICAL ASSISTANCE.—The Secretary of
 5 Labor may provide technical assistance to assist an
 6 employer in carrying out an evaluation under para-
 7 graph (2).

8 (c) REGULATIONS.—The Secretary of Labor shall
 9 promulgate such rules and regulations as may be nec-
 10 essary to carry out this section.

11 **SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR**
 12 **PAY EQUITY IN THE WORKPLACE.**

13 (a) IN GENERAL.—There is established the Robert
 14 Reich National Award for Pay Equity in the Workplace,
 15 which shall be evidenced by a medal bearing the inscrip-
 16 tion “Robert Reich National Award for Pay Equity in the
 17 Workplace”. The medal shall be of such design and mate-
 18 rials, and bear such additional inscriptions, as the Sec-
 19 retary may prescribe.

20 (b) CRITERIA FOR QUALIFICATION.—To qualify to
 21 receive an award under this section a business shall—

22 (1) submit a written application to the Sec-
 23 retary, at such time, in such manner, and containing
 24 such information as the Secretary may require, in-
 25 cluding at a minimum information that dem-

1 onstrates that the business has made substantial ef-
2 fort to eliminate pay disparities between men and
3 women, and deserves special recognition as a con-
4 sequence; and

5 (2) meet such additional requirements and
6 specifications as the Secretary determines to be ap-
7 propriate.

8 (c) MAKING AND PRESENTATION OF AWARD.—

9 (1) AWARD.—After receiving recommendations
10 from the Secretary, the President or the designated
11 representative of the President shall annually
12 present the award described in subsection (a) to
13 businesses that meet the qualifications described in
14 subsection (b).

15 (2) PRESENTATION.—The President or the des-
16 ignated representative of the President shall present
17 the award with such ceremonies as the President or
18 the designated representative of the President may
19 determine to be appropriate.

20 (d) BUSINESS.—For the purposes of this section, the
21 term “business” includes—

22 (1)(A) a corporation, including a nonprofit cor-
23 poration;

24 (B) a partnership;

25 (C) a professional association;

1 (D) a labor organization; and

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

4 (2) an entity carrying out an education referral
5 program, a training program, such as an apprentice-
6 ship or management training program, or a similar
7 program; and

8 (3) an entity carrying out a joint program,
9 formed by a combination of any entities described in
10 paragraph (1) or (2).

11 **SEC. 8. SENSE OF THE SENATE REGARDING INCREASED IN-**
12 **FORMATION ON PAY DISPARITIES.**

13 It is the sense of the Senate that the President should
14 take appropriate steps to increase the amount of informa-
15 tion available with respect to wage disparities. In so doing,
16 the President, or his designees, should consider ways of
17 collecting this data that—

18 (1) maximize the utility of the information for
19 both the government and the public; while

20 (2) protecting individuals' privacy and minimiz-
21 ing the burdens on reporting entities.

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