

106TH CONGRESS
1ST SESSION

H. R. 1271

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

MARCH 24, 1999

Ms. NORTON introduced the following bill; which was referred to the Committee on Education and the Workforce

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 1999”.

6 (b) REFERENCE.—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment
8 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
2 sion of the Fair Labor Standards Act of 1938.

3 **SEC. 2. FINDINGS.**

4 The Congress finds the following:

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

10 (2) The existence of such wage differentials—

11 (A) depresses wages and living standards
12 for employees necessary for their health and ef-
13 ficiency;

14 (B) prevents the maximum utilization of
15 the available labor resources;

16 (C) tends to cause labor disputes, thereby
17 burdening, affecting, and obstructing com-
18 merce;

19 (D) burdens commerce and the free flow of
20 goods in commerce; and

21 (E) constitutes an unfair method of com-
22 petition.

23 (3) Discrimination in hiring and promotion has
24 played a role in maintaining a segregated work
25 force.

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

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

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

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

18 (7) Title VII of the Civil Rights Act of 1964
19 prohibits discrimination in compensation because of
20 race, color, religion, national origin, and sex. The
21 United States Supreme Court, in its decision in
22 County of Washington v. Gunther, 452 U.S. 161
23 (1981), held that title VII’s prohibition against dis-
24 crimination in compensation also applies to jobs
25 which do not constitute “equal work” as defined in

1 section 6(d) of the Fair Labor Standards Act of
2 1938. Decisions of lower courts, however, have dem-
3 onstrated that further clarification of existing legis-
4 lation is necessary in order effectively to carry out
5 the intent of Congress to implement the Supreme
6 Court's holding in its Gunther decision.

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

14 (A) providing a solution to problems in the
15 economy created by discriminating wage dif-
16 ferentials;

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

21 (C) promoting stable families by enabling
22 working family members to earn a fair rate of
23 pay.

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

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

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

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

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

23 “(3) For purposes of administration and enforcement
24 of this subsection, any amounts owing to any employee
25 which have been withheld in violation of paragraph (1)(A)

1 shall be deemed to be unpaid minimum wages or unpaid
2 overtime compensation under this section or section 7.

3 “(4) As used in this subsection:

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

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

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

19 **SEC. 4. PROHIBITED ACTS.**

20 Section 15(a) (29 U.S.C. 215(a)) is amended by
21 striking the period at the end of paragraph (5) and insert-
22 ing a semicolon and by adding after paragraph (5) the
23 following:

24 “(6) to discriminate against any individual be-
25 cause such individual has opposed any act or prac-

1 tice made unlawful by section 6(g) or because such
2 individual made a charge, testified, assisted, or par-
3 ticipated in any manner in an investigation, pro-
4 ceeding, or hearing under section 6(g); or

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

14 **SEC. 5. REMEDIES.**

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

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

17 “(f) In any action brought under this section for vio-
18 lation of section 6(g), the court shall, in addition to any
19 other remedies awarded to the prevailing plaintiff or plain-
20 tiffs, allow expert fees as part of the costs. Any such action
21 may be maintained as a class action as provided by the
22 Federal Rules of Civil Procedure.”;

23 (2) in subsection (b), by striking “section
24 15(a)(3)” each place it occurs and inserting “para-
25 graphs (3), (6), and (7) of section 15(a)”;

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

5 **SEC. 6. RECORDS.**

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

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

21 “(B) Every employer subject to section 6(g) shall file
22 annually with the Equal Employment Opportunity Com-
23 mission a report signed by its president, treasurer, or cor-
24 responding principal officer containing information in
25 such detail as may be necessary accurately to disclose the

1 wage or salary rates paid to each classification, position,
2 job title, or other wage or salary group of employees em-
3 ployed by the employer, as well as the sex, race, and na-
4 tional origin of employees at each wage or salary level in
5 each classification, position, job title, or other wage or sal-
6 ary group. The report shall not contain the name of any
7 individual employee.

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

19 “(D) In order to carry out the purposes of this Act
20 the Equal Employment Opportunity Commission shall by
21 regulation make reasonable provision for the inspection
22 and examination by any person of the information and
23 data contained in any report filed with it pursuant to sub-
24 paragraph (B).

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

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

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

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

21 “(4) The Equal Employment Opportunity Commis-
22 sion shall undertake studies and provide information and
23 technical assistance to employers, labor organizations, and
24 the general public concerning effective means available to
25 implement the provisions of section 6(g) prohibiting wage

1 discrimination between employees performing work in
2 equivalent jobs on the basis of sex, race, or national origin.
3 Such studies, information, and technical assistance shall
4 be based upon and include reference to the declared policy
5 of such section to eliminate such discrimination. In order
6 to achieve the purposes of such section, the Equal Employ-
7 ment Opportunity Commission shall further carry on a
8 continuing program of research, education, and technical
9 assistance including—

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

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

19 “(C) sponsoring and assisting State and com-
20 munity informational and educational programs; and

21 “(D) providing technical assistance to employ-
22 ers, labor organizations, professional associations
23 and other interested persons on means of achieving
24 and maintaining compliance with the provisions of
25 section 6(g).

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

6 **SEC. 8. EFFECTIVE DATE.**

7 The amendments made by this Act shall take effect
8 upon the expiration of one year from the date of its
9 enactment.

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