

106TH CONGRESS  
1ST SESSION

# H. R. 2397

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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1999

Ms. DELAURO (for herself, Mr. GEPHARDT, Ms. NORTON, Mr. COSTELLO, Mr. GEJDENSON, Mrs. MALONEY of New York, Ms. PELOSI, Mrs. LOWEY, Ms. KILPATRICK, Mr. GEORGE MILLER of California, Mr. OLVER, Ms. KAPTUR, Mr. FROST, Mr. BRADY of Pennsylvania, Mr. STARK, Ms. MILLENDER-MCDONALD, Mr. NADLER, Ms. WOOLSEY, Mr. SERRANO, Mr. SANDERS, Mr. MCGOVERN, Mr. McNULTY, Ms. SCHAKOWSKY, Ms. JACKSON-LEE of Texas, Mrs. TAUSCHER, Mr. LUTHER, Mr. LANTOS, Ms. ROYBAL-ALLARD, Mr. ALLEN, Mrs. THURMAN, Mr. MALONEY of Connecticut, Mr. KUCINICH, Mr. BALDACCI, Mr. WEYGAND, Mr. BROWN of Ohio, Mr. MEEHAN, Ms. ESHOO, Mrs. MINK of Hawaii, Mr. UNDERWOOD, Mr. BONIOR, Mr. SHOWS, Mrs. JONES of Ohio, Mrs. CLAYTON, Mr. KENNEDY of Rhode Island, Mr. McDERMOTT, Mr. BROWN of California, Ms. MCKINNEY, Mr. WYNN, Mr. WAXMAN, Mr. ANDREWS, Mr. WEINER, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. SLAUGHTER, Mr. LAMPSON, Mr. HOEFFEL, Mr. DAVIS of Illinois, Mr. KILDEE, Mr. FORD, Mr. CROWLEY, Mr. INSLEE, Mr. SHERMAN, Mr. MARKEY, Mr. ROTHMAN, Mr. STRICKLAND, Mr. BORSKI, Mr. PHELPS, Mr. COYNE, Mr. HOYER, Mr. BERMAN, Mr. FALEOMAVAEGA, Mr. RANGEL, Mr. SANDLIN, Mr. CONYERS, Mr. PALLONE, Ms. LEE, Mr. PASTOR, Ms. BROWN of Florida, Mr. BLAGOJEVICH, Mr. FRANK of Massachusetts, Mrs. CAPPS, Mr. VENTO, Ms. CARSON, Mr. MOORE, Mr. CUMMINGS, Mr. MATSUI, Mr. KLECZKA, Ms. BERKLEY, Mr. CAPUANO, Mr. SNYDER, Mr. FILNER, Mr. THOMPSON of Mississippi, Mrs. MCCARTHY of New York, Mr. FARR of California, Mr. RODRIGUEZ, Mr. ENGEL, Mr. TIERNEY, Mr. BAIRD, Mr. GONZALEZ, Mr. LARSON, Ms. HOOLEY of Oregon, Mrs. MEEK of Florida, Ms. WATERS, Mr. BARRETT of Wisconsin, Mrs. CHRISTENSEN, Mr. HINCHEY, Ms. BALDWIN, Mr. OBERSTAR, Mr. LEVIN, Mr. WATT of North Carolina, Mr. UDALL of New Mexico, Mr. GUTIERREZ, Mr. HOLT, Mr. WU, Mr. ABERCROMBIE, Mr. HASTINGS of Florida, Ms. SANCHEZ, Mr. RUSH, Mr. DEUTSCH, Ms. LOFGREN, and Mr. CLYBURN) 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 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 AND REFERENCE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Paycheck Fairness Act ”.

6       (b) REFERENCE.—Whenever in this Act (other than  
7       in section 8) an amendment or repeal is expressed in terms  
8       of an amendment to, or repeal of, a section or other provi-  
9       sion, the reference shall be considered to be made to a  
10      section or other provision of the Fair Labor Standards Act  
11      of 1938.

12      **SEC. 2. FINDINGS.**

13      Congress makes the following findings:

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

16           (2) Even in the 1990’s, women earn signifi-  
17      cantly lower pay than men for work on jobs that re-  
18      quire equal skill, effort, and responsibility and that  
19      are performed under similar working conditions.  
20      These pay disparities exist in both the private and  
21      governmental sectors. In many instances, the pay

1 disparities can only be due to continued intentional  
2 discrimination or the lingering effects of past dis-  
3 crimination.

4 (3) The existence of such pay disparities—

5 (A) depresses the wages of working fami-  
6 lies who rely on the wages of all members of the  
7 family to make ends meet;

8 (B) prevents the optimum utilization of  
9 available labor resources;

10 (C) has been spread and perpetuated,  
11 through commerce and the channels and instru-  
12 mentalities of commerce, among the workers of  
13 the several States;

14 (D) burdens commerce and the free flow of  
15 goods in commerce;

16 (E) constitutes an unfair method of com-  
17 petition in commerce;

18 (F) leads to labor disputes burdening and  
19 obstructing commerce and the free flow of  
20 goods in commerce;

21 (G) interferes with the orderly and fair  
22 marketing of goods in commerce; and

23 (H) in many instances, may deprive work-  
24 ers of equal protection on the basis of sex in  
25 violation of the 5th and 14th amendments.

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

7           (B) Elimination of such barriers would have  
8           positive effects, including—

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

11                  (ii) substantially reducing the number of  
12                  working women earning unfairly low wages,  
13                  thereby reducing the dependence on public as-  
14                  sistance; and

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

17                  (iv) remedying the effects of past discrimi-  
18                  nation on the basis of sex and ensuring that in  
19                  the future workers are afforded equal protection  
20                  on the basis of sex; and

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

24           (5) With increased information about the provi-  
25           sions added by the Equal Pay Act of 1963 and gen-

1       eralized wage data, along with more effective rem-  
 2       edies, women will be better able to recognize and en-  
 3       force their rights to equal pay for work on jobs that  
 4       require equal skill, effort, and responsibility and that  
 5       are performed under similar working conditions.

6           (6) Certain employers have already made great  
 7       strides in eradicating unfair pay disparities in the  
 8       workplace and their achievements should be recog-  
 9       nized.

10 **SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**  
 11 **QUIREMENTS.**

12       (a) REQUIRED DEMONSTRATION FOR AFFIRMATIVE  
 13 DEFENSE.—Section 6(d)(1) (29 U.S.C. 206(d)(1)) is  
 14 amended by striking “(iv) a differential” and all that fol-  
 15 lows through the period and inserting the following: “(iv)  
 16 a differential based on a bona fide factor other than sex,  
 17 such as education, training, or experience, except that this  
 18 clause shall apply only if—

19           “(I) the employer demonstrates that—

20                   “(aa) such factor—

21                           “(AA) is job-related with respect to  
 22                           the position in question; or

23                           “(BB) furthers a legitimate business  
 24                           purpose, except that this item shall not  
 25                           apply where the employee demonstrates

1           that an alternative employment practice  
2           exists that would serve the same business  
3           purpose without producing such differen-  
4           tial and that the employer has refused to  
5           adopt such alternative practice; and

6           “(bb) such factor was actually applied and  
7           used reasonably in light of the asserted jus-  
8           tification; and

9           “(II) if the employer makes the demonstration  
10          described in subclause (I), the employee fails to dem-  
11          onstrate that the differential produced by the reli-  
12          ance of the employer on the factor described in such  
13          subclause is the result of discrimination on the basis  
14          of sex by the employer.

15   An employer that is not otherwise in compliance with this  
16   paragraph may not reduce the wages of any employee in  
17   order to achieve such compliance.”.

18          (b) APPLICATION OF PROVISIONS.—Section 6(d) (29  
19   U.S.C. 206(d)) is amended by adding at the end the fol-  
20   lowing:

21          “(5) The provisions of this subsection shall apply to  
22   applicants for employment if such applicants, upon em-  
23   ployment by the employer applied to, would be subject to  
24   any other subsection of this section.”.

1 (c) ELIMINATION OF ESTABLISHMENT REQUIRE-  
2 MENT.—Section 6(d)(1) (29 U.S.C. 206(d)(1)) is  
3 amended—

4 (1) by striking “, within any establishment in  
5 which such employees are employed,”; and

6 (2) by striking “such establishment” each place  
7 it appears.

8 (d) NONRETALIATION PROVISION.—Section 15(a)(3)  
9 (29 U.S.C. 215(a)(3)) is amended—

10 (1) by striking “employee” the first place it ap-  
11 pears and inserting “employee (or applicant for em-  
12 ployment in the case of an applicant described in  
13 section 6(d)(5))”;

14 (2) by inserting “(or applicant)” after “em-  
15 ployee” the second place it appears;

16 (3) by striking “or has” each place it appears  
17 and inserting “has”; and

18 (4) by inserting before the semicolon the fol-  
19 lowing: “, has inquired about, discussed, or other-  
20 wise disclosed the wages of the employee or another  
21 employee, or because the employee (or applicant) has  
22 made a charge, testified, assisted, or participated in  
23 any manner in an investigation, proceeding, hearing,  
24 or action under section 6(d)”.

1       (e) ENHANCED PENALTIES.—Section 16(b) (29  
2 U.S.C. 216(b)) is amended—

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

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

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

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

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

24               (A) by striking “in such action” and in-  
25       serting “in any action brought to recover the li-



1 ability prescribed in any of the preceding sen-  
2 tences of this subsection”; and

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

5 (f) ACTION BY SECRETARY.—Section 16(c) (29  
6 U.S.C. 216(c)) is amended—

7 (1) in the first sentence—

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

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

15 (2) in the second sentence, by inserting before  
16 the period the following: “and, in the case of a viola-  
17 tion of section 6(d), additional compensatory or pu-  
18 nitive damages”;

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

22 (4) in the last sentence—

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

25 “(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 indi-  
6 vidual becomes a party plaintiff to the class action.”.

7 **SEC. 4. TRAINING.**

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

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

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

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

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

1 and other materials, relating to eliminating the pay  
2 disparities;

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

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

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; and

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

16 **SEC. 6. TECHNICAL ASSISTANCE AND EMPLOYER RECOGNI-**  
17 **TION PROGRAM.**

18 (a) GUIDELINES.—

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

1           (2) USE.—The guidelines developed under  
2       paragraph (1) shall be designed to enable employers  
3       voluntarily to compare wages paid for different jobs  
4       to determine if the pay scales involved adequately  
5       and fairly reflect the educational requirements, skill  
6       requirements, independence, working conditions, and  
7       responsibility for each such job with the goal of  
8       eliminating unfair pay disparities between occupa-  
9       tions traditionally dominated by men or women.

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

14       (b) EMPLOYER RECOGNITION.—

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

21          (2) IN GENERAL.—To carry out the purpose of  
22       this subsection, the Secretary of Labor shall estab-  
23       lish a program under which the Secretary shall pro-  
24       vide for the recognition of employers who, pursuant  
25       to a voluntary job evaluation conducted by the em-

1        ployer, adjust their wage scales (such adjustments  
2        shall not include the lowering of wages paid to men)  
3        using the guidelines developed under subsection (a)  
4        to ensure that women are paid fairly in comparison  
5        to men.

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

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

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

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

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

24            (1) submit a written application to the Sec-  
25        retary of Labor, at such time, in such manner, and

1 containing such information as the Secretary may  
2 require, including at a minimum information that  
3 demonstrates that the business has made substantial  
4 effort to eliminate pay disparities between men and  
5 women, and deserves special recognition as a con-  
6 sequence; and

7 (2) meet such additional requirements and  
8 specifications as the Secretary of Labor determines  
9 to be appropriate.

10 (c) MAKING AND PRESENTATION OF AWARD.—

11 (1) AWARD.—After receiving recommendations  
12 from the Secretary of Labor, the President or the  
13 designated representative of the President shall an-  
14 nually present the award described in subsection (a)  
15 to businesses that meet the qualifications described  
16 in subsection (b).

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

22 (d) BUSINESS.—In this section, the term “business”  
23 includes—

24 (1)(A) a corporation, including a nonprofit cor-  
25 poration;

- 1 (B) a partnership;
- 2 (C) a professional association;
- 3 (D) a labor organization; and
- 4 (E) a business entity similar to an entity de-
- 5 scribed in any of subparagraphs (A) through (D);
- 6 (2) an entity carrying out an education referral
- 7 program, a training program, such as an apprentice-
- 8 ship or management training program, or a similar
- 9 program; and
- 10 (3) an entity carrying out a joint program,
- 11 formed by a combination of any entities described in
- 12 paragraph (1) or (2).

13 **SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL**  
14 **EMPLOYMENT OPPORTUNITY COMMISSION.**

15 Section 709 of the Civil Rights Act of 1964 (42  
16 U.S.C. 2000e–8) is amended by adding at the end the fol-  
17 lowing:

18 “(f)(1) Not later than 18 months after the date of  
19 enactment of this subsection, the Commission shall—

20 “(A) complete a survey of the data that is cur-  
21 rently available to the Federal Government relating  
22 to employee pay information for use in the enforce-  
23 ment of Federal laws prohibiting pay discrimination  
24 and, in consultation with other relevant Federal

1 agencies, identify additional data collections that will  
2 enhance the enforcement of such laws; and

3 “(B) based on the results of the survey and  
4 consultations under subparagraph (A), issue regula-  
5 tions to provide for the collection of pay information  
6 data from employers as described by the sex, race,  
7 and national origin of employees.

8 “(2) In implementing paragraph (1), the Commission  
9 shall have as its primary consideration the most effective  
10 and efficient means for enhancing the enforcement of Fed-  
11 eral laws prohibiting pay discrimination. Other factors  
12 that the Commission shall consider include the imposition  
13 of burdens on employers, the frequency of required reports  
14 (including which employers should be required to prepare  
15 reports), appropriate protections for maintaining data  
16 confidentiality, and the most effective format for the data  
17 collections reports.”.

18 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated such sums  
20 as may be necessary to carry out this Act.

