

106TH CONGRESS
1ST SESSION

H. R. 541

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

FEBRUARY 3, 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, and Mrs. TAUSCHER) 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.**

4 This Act may be cited as the “Paycheck Fairness
5 Act”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

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

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

14 (3) The existence of such pay disparities—

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

18 (B) prevents the optimum utilization of
19 available labor resources;

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

24 (D) burdens commerce and the free flow of
25 goods in commerce;

1 (E) constitutes an unfair method of com-
2 petition in commerce;

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

6 (G) interferes with the orderly and fair
7 marketing of goods in commerce; and

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

11 (4)(A) Artificial barriers to the elimination of
12 discrimination in the payment of wages on the basis
13 of sex continue to exist more than 3 decades after
14 the enactment of the Fair Labor Standards Act of
15 1938 (29 U.S.C. 201 et seq.) and the Civil Rights
16 Act of 1964 (42 U.S.C. 2000a et seq.).

17 (B) Elimination of such barriers would have
18 positive effects, including—

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

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

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

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

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

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

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

21 **SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**
 22 **QUIREMENTS.**

23 (a) NONRETALIATION PROVISION.—Section 15(a)(3)
 24 of the Fair Labor Standards Act of 1938 (29 U.S.C.
 25 215(a)(3)) is amended—

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

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

7 (b) ENHANCED PENALTIES.—Section 16(b) of the
8 Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is
9 amended—

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

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

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

24 (4) by inserting after the sentence referred to
25 in paragraph (3), the following: “Notwithstanding

any other provision of Federal law, any action brought to enforce section 6(d) may be maintained as a class action as provided by the Federal Rules of Civil Procedure.”; and

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

(A) by striking “in such action” and inserting “in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection”; and

(B) by inserting before the period the following: “, including expert fees”.

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

(1) in the first sentence—

(A) by inserting “or, in the case of a violation of section 6(d), additional compensatory or punitive damages,” before “and the agreement”; and

(B) by inserting before the period the following: “, or such compensatory or punitive damages, as appropriate”;

(2) in the second sentence, by inserting before the period the following: “and, in the case of a viola-

1 tion of section 6(d), additional compensatory or pu-
2 nitive damages”;

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

6 (4) in the last sentence, by inserting after “in
7 the complaint” the following: “or becomes a party
8 plaintiff in a class action brought to enforce section
9 6(d)”.

10 **SEC. 4. TRAINING.**

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

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

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

22 (1) conducting and promoting research to de-
23 velop the means to correct expeditiously the condi-
24 tions leading to the pay disparities;

1 (2) publishing and otherwise making available
2 to employers, labor organizations, professional asso-
3 ciations, educational institutions, the media, and the
4 general public the findings resulting from studies
5 and other materials, relating to eliminating the pay
6 disparities;

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

9 (4) providing information to employers, labor
10 organizations, professional associations, and other
11 interested persons on the means of eliminating the
12 pay disparities;

13 (5) recognizing and promoting the achievements
14 of employers, labor organizations, and professional
15 associations that have worked to eliminate the pay
16 disparities; and

17 (6) convening a national summit to discuss, and
18 consider approaches for rectifying, the pay dispari-
19 ties.

20 **SEC. 6. TECHNICAL ASSISTANCE AND EMPLOYER RECOGNI-**
21 **TION PROGRAM.**

22 (a) GUIDELINES.—

23 (1) IN GENERAL.—The Secretary of Labor shall
24 develop guidelines to enable employers to evaluate
25 job categories based on objective criteria such as

1 educational requirements, skill requirements, inde-
2 pendence, working conditions, and responsibility, in-
3 cluding decisionmaking responsibility and de facto
4 supervisory responsibility.

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

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

18 (b) EMPLOYER RECOGNITION.—

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

1 (2) IN GENERAL.—To carry out the purpose of
2 this subsection, the Secretary of Labor shall estab-
3 lish a program under which the Secretary shall pro-
4 vide for the recognition of employers who, pursuant
5 to a voluntary job evaluation conducted by the em-
6 ployer, adjust their wage scales (such adjustments
7 shall not include the lowering of wages paid to men)
8 using the guidelines developed under subsection (a)
9 to ensure that women are paid fairly in comparison
10 to men.

11 (3) TECHNICAL ASSISTANCE.—The Secretary of
12 Labor may provide technical assistance to assist an
13 employer in carrying out an evaluation under para-
14 graph (2).

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

18 **SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR**
19 **PAY EQUITY IN THE WORKPLACE.**

20 (a) IN GENERAL.—There is established the Robert
21 Reich National Award for Pay Equity in the Workplace,
22 which shall be evidenced by a medal bearing the inscrip-
23 tion “Robert Reich National Award for Pay Equity in the
24 Workplace”. The medal shall be of such design and mate-

1 rials, and bear such additional inscriptions, as the Sec-
2 retary of Labor may prescribe.

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

5 (1) submit a written application to the Sec-
6 retary of Labor, at such time, in such manner, and
7 containing such information as the Secretary may
8 require, including at a minimum information that
9 demonstrates that the business has made substantial
10 effort to eliminate pay disparities between men and
11 women, and deserves special recognition as a con-
12 sequence; and

13 (2) meet such additional requirements and
14 specifications as the Secretary of Labor determines
15 to be appropriate.

16 (c) MAKING AND PRESENTATION OF AWARD.—

17 (1) AWARD.—After receiving recommendations
18 from the Secretary of Labor, the President or the
19 designated representative of the President shall an-
20 nually present the award described in subsection (a)
21 to businesses that meet the qualifications described
22 in subsection (b).

23 (2) PRESENTATION.—The President or the des-
24 ignated representative of the President shall present
25 the award under this section with such ceremonies

1 as the President or the designated representative of
2 the President may determine to be appropriate.

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

5 (1)(A) a corporation, including a nonprofit cor-
6 poration;

7 (B) a partnership;

8 (C) a professional association;

9 (D) a labor organization; and

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

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

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

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

21 It is the sense of the Senate that the President should
22 take appropriate steps to increase the amount of informa-
23 tion available with respect to wage disparities. In so doing,
24 the President, or the designees of the President, should
25 consider ways of collecting this data that—

- 1 (1) maximize the utility of the information for
2 both the government and the public; while
3 (2) protecting individuals' privacy and minimiz-
4 ing the burdens on reporting entities.

5 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

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