

106TH CONGRESS
1ST SESSION

S. 74

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 SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. DASCHLE (for himself, Mr. KERRY, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. REID, Mr. WYDEN, Mrs. BOXER, Mr. LAUTENBERG, Mr. KENNEDY, Mr. KERREY, Mr. DURBIN, Ms. LANDRIEU, Mr. REED, Mr. ROBB, Mr. TORRICELLI, Mr. BREAUX, Mr. WELLSTONE, Mrs. FEINSTEIN, Mr. HOLLINGS, Mr. DODD, Mr. AKAKA, Mr. FEINGOLD, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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) ensuring equal protection pursuant to
8 Congress' power to enforce the 5th and 14th
9 amendments.

10 (5) With increased information about the provi-
11 sions added by the Equal Pay Act of 1963 and wage
12 data, along with more effective remedies, women will
13 be better able to recognize and enforce their rights
14 to equal pay for work on jobs that require equal
15 skill, effort, and responsibility and that are per-
16 formed 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) REQUIRED DEMONSTRATION FOR AFFIRMATIVE
24 DEFENSE.—Section 6(d)(1) of the Fair Labor Standards
25 Act of 1938 (29 U.S.C. 206(d)(1)) is amended by striking

1 “(iv) a differential” and all that follows through the period
2 and inserting the following: “(iv) a differential based on
3 a bona fide factor other than sex, such as education, train-
4 ing or experience, except that this clause shall apply only
5 if—

6 “(I) the employer demonstrates
7 that—

8 “(aa) such factor—

9 “(AA) is job-related with re-
10 spect to the position in question;
11 or

12 “(BB) furthers a legitimate
13 business purpose, except that this
14 item shall not apply where the
15 employee demonstrates that an
16 alternative employment practice
17 exists that would serve the same
18 business purpose without pro-
19 ducing such differential and that
20 the employer has refused to
21 adopt such alternative practice;
22 and

23 “(bb) such factor was actually
24 applied and used reasonably in light
25 of the asserted justification; and

1 “(II) upon the employer succeeding
2 under subclause I, the employee fails to
3 demonstrate that the differential produced
4 by the reliance of the employer on such
5 factor is itself the result of discrimination
6 on the basis of sex by the employer.

7 “An employer that is not otherwise in compliance
8 with this paragraph may not reduce the wages of
9 any employee in order to achieve such compliance.”.

10 (b) APPLICATION OF PROVISIONS.—Section 6(d)(1)
11 of the Fair Labor Standards Act of 1938 (29 U.S.C.
12 206(d)(1)) is amended by adding at the end the following:
13 “The provisions of this subsection shall apply to applicants
14 for employment if such applicants, upon employment by
15 the employer, would be subject to any provisions of this
16 section.”.

17 (c) ELIMINATION OF ESTABLISHMENT REQUIRE-
18 MENT.—Section 6(d) of the Fair Labor Standards Act of
19 1938 (29 U.S.C. 206(d)) is amended—

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

22 (2) by striking “in such establishment” each
23 place it appears.

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

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

6 (2) by inserting before the semicolon the fol-
 7 lowing: “, or has inquired about, discussed, or other-
 8 wise disclosed the wages of the employee or another
 9 employee, or because the employee (or applicant) has
 10 made a charge, testified, assisted, or participated in
 11 any manner in an investigation, proceeding, hearing,
 12 or action under section 6(d)”.

13 (e) ENHANCED PENALTIES.—Section 16(b) of the
 14 Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is
 15 amended—

16 (1) by inserting after the first sentence the fol-
 17 lowing: “Any employer who violates section 6(d)
 18 shall additionally be liable for such compensatory or
 19 punitive damages as may be appropriate, except that
 20 the United States shall not be liable for punitive
 21 damages.”;

22 (2) in the sentence beginning “An action to”,
 23 by striking “either of the preceding sentences” and
 24 inserting “any of the preceding sentences of this
 25 subsection”;

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

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

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

12 (A) by striking “in such action” and in-
13 serting “in any action brought to recover the li-
14 ability prescribed in any of the preceding sen-
15 tences of this subsection”; and

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

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

21 (1) in the first sentence—

22 (A) by inserting “or, in the case of a viola-
23 tion of section 6(d), additional compensatory or
24 punitive damages,” before “and the agree-
25 ment”; and

1 (B) by inserting before the period the fol-
 2 lowing: “, or such compensatory or punitive
 3 damages, as appropriate”;

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

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

11 (4) in the last sentence—

12 (A) by striking “commenced in the case”
 13 and inserting “commenced—
 14 “(1) in the case”;

15 (B) by striking the period and inserting
 16 “; or”; and

17 (C) by adding at the end the following:

18 “(2) in the case of a class action brought to en-
 19 force section 6(d), on the date on which the indi-
 20 vidual becomes a party plaintiff to the class action”.

21 **SEC. 4. TRAINING.**

22 The Equal Employment Opportunity Commission
 23 and the Office of Federal Contract Compliance Programs,
 24 subject to the availability of funds appropriated under sec-
 25 tion 9(b), shall provide training to Commission employees

1 and affected individuals and entities on matters involving
2 discrimination in the payment of wages.

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

4 The Secretary of Labor shall conduct studies and
5 provide information to employers, labor organizations, and
6 the general public concerning the means available to elimi-
7 nate pay disparities between men and women, including—

8 (1) conducting and promoting research to de-
9 velop the means to correct expeditiously the condi-
10 tions leading to the pay disparities;

11 (2) publishing and otherwise making available
12 to employers, labor organizations, professional asso-
13 ciations, educational institutions, the media, and the
14 general public the findings resulting from studies
15 and other materials, relating to eliminating the pay
16 disparities;

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

19 (4) providing information to employers, labor
20 organizations, professional associations, and other
21 interested persons on the means of eliminating the
22 pay disparities;

23 (5) recognizing and promoting the achievements
24 of employers, labor organizations, and professional

1 associations that have worked to eliminate the pay
2 disparities; and

3 (6) convening a national summit to discuss, and
4 consider approaches for rectifying, the pay dispari-
5 ties.

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

8 (a) GUIDELINES.—

9 (1) IN GENERAL.—The Secretary of Labor shall
10 develop guidelines to enable employers to evaluate
11 job categories based on objective criteria such as
12 educational requirements, skill requirements, inde-
13 pendence, working conditions, and responsibility, in-
14 cluding decisionmaking responsibility and de facto
15 supervisory responsibility.

16 (2) USE.—The guidelines developed under
17 paragraph (1) shall be designed to enable employers
18 voluntarily to compare wages paid for different jobs
19 to determine if the pay scales involved adequately
20 and fairly reflect the educational requirements, skill
21 requirements, independence, working conditions, and
22 responsibility for each such job with the goal of
23 eliminating unfair pay disparities between occupa-
24 tions traditionally dominated by men or women.

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

5 (b) EMPLOYER RECOGNITION.—

6 (1) PURPOSE.—It is the purpose of this sub-
7 section to emphasize the importance of, encourage
8 the improvement of, and recognize the excellence of
9 employer efforts to pay wages to women that reflect
10 the real value of the contributions of such women to
11 the workplace.

12 (2) IN GENERAL.—To carry out the purpose of
13 this subsection, the Secretary of Labor shall estab-
14 lish a program under which the Secretary shall pro-
15 vide for the recognition of employers who, pursuant
16 to a voluntary job evaluation conducted by the em-
17 ployer, adjust their wage scales (such adjustments
18 shall not include the lowering of wages paid to men)
19 using the guidelines developed under subsection (a)
20 to ensure that women are paid fairly in comparison
21 to men.

22 (3) TECHNICAL ASSISTANCE.—The Secretary of
23 Labor may provide technical assistance to assist an
24 employer in carrying out an evaluation under para-
25 graph (2).

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

4 **SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR**
 5 **PAY EQUITY IN THE WORKPLACE.**

6 (a) IN GENERAL.—There is established the Robert
 7 Reich National Award for Pay Equity in the Workplace,
 8 which shall be evidenced by a medal bearing the inscrip-
 9 tion “Robert Reich National Award for Pay Equity in the
 10 Workplace”. The medal shall be of such design and mate-
 11 rials, and bear such additional inscriptions, as the Sec-
 12 retary of Labor may prescribe.

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

15 (1) submit a written application to the Sec-
 16 retary of Labor, at such time, in such manner, and
 17 containing such information as the Secretary may
 18 require, including at a minimum information that
 19 demonstrates that the business has made substantial
 20 effort to eliminate pay disparities between men and
 21 women, and deserves special recognition as a con-
 22 sequence; and

23 (2) meet such additional requirements and
 24 specifications as the Secretary of Labor determines
 25 to be appropriate.

1 (c) MAKING AND PRESENTATION OF AWARD.—

2 (1) AWARD.—After receiving recommendations
3 from the Secretary of Labor, the President or the
4 designated representative of the President shall an-
5 nually present the award described in subsection (a)
6 to businesses that meet the qualifications described
7 in subsection (b).

8 (2) PRESENTATION.—The President or the des-
9 ignated representative of the President shall present
10 the award under this section with such ceremonies
11 as the President or the designated representative of
12 the President may determine to be appropriate.

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

15 (1)(A) a corporation, including a nonprofit cor-
16 poration;

17 (B) a partnership;

18 (C) a professional association;

19 (D) a labor organization; and

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

22 (2) an entity carrying out an education referral
23 program, a training program, such as an apprentice-
24 ship or management training program, or a similar
25 program; and

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

4 **SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL**
 5 **EMPLOYMENT OPPORTUNITY COMMISSION.**

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

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

11 “(A) complete a survey of the data that is cur-
 12 rently available to the Federal Government relating
 13 to employee pay information for use in the enforce-
 14 ment of Federal laws prohibiting pay discrimination
 15 and, in consultation with other relevant Federal
 16 agencies, identify additional data collections that will
 17 enhance the enforcement of such laws; and

18 “(B) based on the results of the survey and
 19 consultations under subparagraph (A), issue regula-
 20 tions to provide for the collection of pay information
 21 data from employers as described by the sex, race,
 22 and national origin of employees.

23 “(2) In implementing paragraph (1), the Commission
 24 shall have as its primary consideration the most effective
 25 and efficient means for enhancing the enforcement of Fed-

1 eral laws prohibiting pay discrimination. For this purpose,
2 the Commission shall consider factors including the im-
3 position of burdens on employers, the frequency of required
4 reports (including which employers should be required to
5 prepare reports), appropriate protections for maintaining
6 data confidentiality, and the most effective format for the
7 data collection reports.”.

8 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

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