

109TH CONGRESS  
1ST SESSION

# H. R. 1697

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.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2005

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

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## 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 2005”.

6 (b) REFERENCE.—Except as provided in section 8,  
7 whenever in this Act an amendment or repeal is expressed  
8 in terms of an amendment to, or repeal of, a section or  
9 other provision, the reference shall be considered to be

1 made to a section or other provision of the Fair Labor  
2 Standards Act of 1938 (29 U.S.C. 201 et seq.).

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) Wage rate differentials exist between equiv-  
6 alent jobs segregated by sex, race, and national ori-  
7 gin in Government employment and in industries en-  
8 gaged in commerce or in the production of goods for  
9 commerce.

10 (2) The existence of such wage rate differen-  
11 tials—

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

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

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

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

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

1           (3) Discrimination in hiring and promotion has  
2 played a role in maintaining a segregated work  
3 force.

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

7           (5) A 2000 study conducted by the Census Bu-  
8 reau of 400 fields that employed 10,000 full-time,  
9 year-round workers found that women were able to  
10 earn at least as much as men in just 5 fields: haz-  
11 ardous material removal, telecommunications line in-  
12 stallation and repair, meeting and convention plan-  
13 ning, food preparation, and construction trade as-  
14 sistant work.

15           (6) In 2004, an Institute for Women’s Policy  
16 Research analysis of data collected in the Current  
17 Population Survey by the Bureau of Labor Statistics  
18 found that women were paid only 76 cents for every  
19 dollar that a man is paid.

20           (7) Section 6(d) of the Fair Labor Standards  
21 Act of 1938 (29 U.S.C. 206(d)) prohibits discrimi-  
22 nation in compensation for “equal work” on the  
23 basis of sex.

24           (8) Title VII of the Civil Rights Act of 1964  
25 (42 U.S.C. 2000e et seq.) prohibits discrimination in

1 compensation because of race, color, religion, na-  
2 tional origin, and sex. The Supreme Court, in its de-  
3 cision in *County of Washington v. Gunther*, 452  
4 U.S. 161 (1981), held that title VII’s prohibition  
5 against discrimination in compensation also applies  
6 to jobs that do not constitute “equal work” as de-  
7 fined in section 6(d) of the Fair Labor Standards  
8 Act of 1938 (29 U.S.C. 206(d)). Decisions of lower  
9 courts, however, have demonstrated that further  
10 clarification of existing legislation is necessary in  
11 order effectively to carry out the intent of Congress  
12 to implement the Supreme Court’s holding in its  
13 *Gunther* decision.

14 (9) Artificial barriers to the elimination of dis-  
15 crimination in compensation based upon sex, race,  
16 and national origin continue to exist more than 3  
17 decades after the passage of section 6(d) of the Fair  
18 Labor Standards Act of 1938 (29 U.S.C. 206(d))  
19 and the Civil Rights Act of 1964. Elimination of  
20 such barriers would have positive effects, includ-  
21 ing—

22 (A) providing a solution to problems in the  
23 economy created by discrimination through  
24 wage rate differentials;

1           (B) substantially reducing the number of  
2           working women and people of color earning low  
3           wages, thereby reducing the dependence on pub-  
4           lic assistance; and

5           (C) promoting stable families by enabling  
6           working family members to earn a fair rate of  
7           pay.

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

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

11          “(h)(1)(A) Except as provided in subparagraph (B),  
12          no employer having employees subject to any provision of  
13          this section shall discriminate, within any establishment  
14          in which such employees are employed, between employees  
15          on the basis of sex, race, or national origin by paying  
16          wages to employees in such establishment in a job that  
17          is dominated by employees of a particular sex, race, or  
18          national origin at a rate less than the rate at which the  
19          employer pays wages to employees in such establishment  
20          in another job that is dominated by employees of the oppo-  
21          site sex or of a different race or national origin, respec-  
22          tively, for work on equivalent jobs.

23          “(B) Nothing in subparagraph (A) shall prohibit the  
24          payment of different wage rates to employees where such  
25          payment is made pursuant to—

1           “(i) a seniority system;

2           “(ii) a merit system;

3           “(iii) a system that measures earnings by quan-  
4           tity or quality of production; or

5           “(iv) a differential based on a bona fide factor  
6           other than sex, race, or national origin, such as edu-  
7           cation, training, or experience, except that this  
8           clause shall apply only if—

9                   “(I) the employer demonstrates that—

10                           “(aa) such factor—

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

13                                   “(BB) furthers a legitimate busi-  
14                                   ness purpose, except that this item  
15                                   shall not apply if the employee dem-  
16                                   onstrates that an alternative employ-  
17                                   ment practice exists that would serve  
18                                   the same business purpose without  
19                                   producing such differential and that  
20                                   the employer has refused to adopt  
21                                   such alternative practice; and

22                                   “(bb) such factor was actually applied  
23                                   and used reasonably in light of the as-  
24                                   serted justification; and

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

7           “(C) The Equal Employment Opportunity Commis-  
8           sion shall issue guidelines specifying criteria for deter-  
9           mining whether a job is dominated by employees of a par-  
10          ticular sex, race, or national origin. Such guidelines shall  
11          not include a list of such jobs.

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

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

21          “(3) For purposes of administration and enforcement  
22          of this subsection, any amounts owing to any employee  
23          that have been withheld in violation of paragraph (1)(A)  
24          shall be deemed to be unpaid minimum wages or unpaid  
25          overtime compensation under this section or section 7.

1 “(4) In this subsection:

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

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

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

17 **SEC. 4. PROHIBITED ACTS.**

18 Section 15(a) (29 U.S.C. 215(a)) is amended—

19 (1) by striking the period at the end of para-  
20 graph (5) and inserting a semicolon; and

21 (2) by adding after paragraph (5) the following  
22 new paragraphs:

23 “(6) to discriminate against any individual be-  
24 cause such individual has opposed any act or prac-  
25 tice made unlawful by section 6(h) or because such

1 individual made a charge, testified, assisted, or par-  
2 ticipated in any manner in an investigation, pro-  
3 ceeding, or hearing to enforce section 6(h); or

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

13 **SEC. 5. REMEDIES.**

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

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

23 (2) in the sentence beginning “An action to”,  
24 by striking “either of the preceding sentences” and

1 inserting “any of the preceding sentences of this  
2 subsection”;

3 (3) in the sentence beginning “No employees”,  
4 by striking “No employees” and inserting “Except  
5 with respect to class actions brought under sub-  
6 section (f), no employee”;

7 (4) in the sentence beginning “The court in”,  
8 by striking “in such action” and inserting “in any  
9 action brought to recover the liability prescribed in  
10 any of the preceding sentences of this subsection”;  
11 and

12 (5) by striking “section 15(a)(3)” each place it  
13 occurs and inserting “paragraphs (3), (6), and (7)  
14 of section 15(a)”.

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

18 (1) in the first sentence—

19 (A) by inserting “or, in the case of a viola-  
20 tion of subsection (d) or (h) of section 6, addi-  
21 tional compensatory or punitive damages,” be-  
22 fore “and the agreement”; and

23 (B) by inserting before the period the fol-  
24 lowing: “, or such compensatory or punitive  
25 damages, as appropriate”;

1           (2) in the second sentence, by inserting before  
2           the period the following: “and, in the case of a viola-  
3           tion of subsection (d) or (h) of section 6, additional  
4           compensatory or punitive damages”; and

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

8           (c) FEES.—Section 16 (29 U.S.C. 216) is amended  
9           by adding at the end the following:

10          “(f) In any action brought under this section for vio-  
11          lation of section 6(h), the court shall, in addition to any  
12          other remedies awarded to the prevailing plaintiff or plain-  
13          tiffs, allow expert fees as part of the costs. Any such action  
14          may be maintained as a class action as provided by the  
15          Federal Rules of Civil Procedure.”.

16   **SEC. 6. RECORDS.**

17          (a) TECHNICAL AMENDMENT.—Section 11(c) (29  
18          U.S.C. 211(c)) is amended by inserting “(1)” after “(c)”.

19          (b) RECORDS.—Section 11(c) (as amended by sub-  
20          section (a)) is further amended by adding at the end the  
21          following:

22          “(2)(A) Every employer subject to section 6(h) shall  
23          preserve records that document and support the method,  
24          system, calculations, and other bases used by the employer  
25          in establishing, adjusting, and determining the wage rates

1 paid to the employees of the employer. Every employer  
2 subject to section 6(h) shall preserve such records for such  
3 periods of time, and shall make such reports from the  
4 records to the Equal Employment Opportunity Commis-  
5 sion, as shall be prescribed by the Equal Employment Op-  
6 portunity Commission by regulation or order as necessary  
7 or appropriate for the enforcement of the provisions of sec-  
8 tion 6(h) or any regulation promulgated pursuant to sec-  
9 tion 6(h).”.

10 (c) SMALL BUSINESS EXEMPTIONS.—Section 11(c)  
11 (as amended by subsections (a) and (b)) is further amend-  
12 ed by adding at the end the following:

13 “(B)(i) Every employer subject to section 6(h) that  
14 has 25 or more employees on any date during the first  
15 or second year after the effective date of this paragraph,  
16 or 15 or more employees on any date during any subse-  
17 quent year after such second year, shall, in accordance  
18 with regulations promulgated by the Equal Employment  
19 Opportunity Commission under subparagraph (F), pre-  
20 pare and submit to the Equal Employment Opportunity  
21 Commission for the year involved a report signed by the  
22 president, treasurer, or corresponding principal officer, of  
23 the employer that includes information that discloses the  
24 wage rates paid to employees of the employer in each clas-  
25 sification, position, or job title, or to employees in other

1 wage groups employed by the employer, including informa-  
2 tion with respect to the sex, race, and national origin of  
3 employees at each wage rate in each classification, posi-  
4 tion, job title, or other wage group.”.

5 (d) PROTECTION OF CONFIDENTIALITY.—Section  
6 11(c) (as amended by subsections (a) through (c)) is fur-  
7 ther amended by adding at the end the following:

8 “(ii) The rules and regulations promulgated by the  
9 Equal Employment Opportunity Commission under sub-  
10 paragraph (F), relating to the form of such a report, shall  
11 include requirements to protect the confidentiality of em-  
12 ployees, including a requirement that the report shall not  
13 contain the name of any individual employee.”.

14 (e) USE; INSPECTIONS; EXAMINATIONS; REGULA-  
15 TIONS.—Section 11(c) (as amended by subsections (a)  
16 through (d)) is further amended by adding at the end the  
17 following:

18 “(C) The Equal Employment Opportunity Commis-  
19 sion may publish any information and data that the Equal  
20 Employment Opportunity Commission obtains pursuant to  
21 the provisions of subparagraph (B). The Equal Employ-  
22 ment Opportunity Commission may use the information  
23 and data for statistical and research purposes, and com-  
24 pile and publish such studies, analyses, reports, and sur-  
25 veys based on the information and data as the Equal Em-

1 ployment Opportunity Commission may consider appro-  
2 priate.

3       “(D) In order to carry out the purposes of this Act,  
4 the Equal Employment Opportunity Commission shall by  
5 regulation make reasonable provision for the inspection  
6 and examination by any person of the information and  
7 data contained in any report submitted to the Equal Em-  
8 ployment Opportunity Commission pursuant to subpara-  
9 graph (B).

10       “(E) The Equal Employment Opportunity Commis-  
11 sion shall by regulation provide for the furnishing of copies  
12 of reports submitted to the Equal Employment Oppor-  
13 tunity Commission pursuant to subparagraph (B) to any  
14 person upon payment of a charge based upon the cost of  
15 the service.

16       “(F) The Equal Employment Opportunity Commis-  
17 sion shall issue rules and regulations prescribing the form  
18 and content of reports required to be submitted under sub-  
19 paragraph (B) and such other reasonable rules and regu-  
20 lations as the Equal Employment Opportunity Commis-  
21 sion may find necessary to prevent the circumvention or  
22 evasion of such reporting requirements. In exercising the  
23 authority of the Equal Employment Opportunity Commis-  
24 sion under subparagraph (B), the Equal Employment Op-  
25 portunity Commission may prescribe by general rule sim-

1 plified reports for employers for whom the Equal Employ-  
2 ment Opportunity Commission finds that because of the  
3 size of the employers a detailed report would be unduly  
4 burdensome.”.

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

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

9 “(4) The Equal Employment Opportunity Commis-  
10 sion shall conduct studies and provide information and  
11 technical assistance to employers, labor organizations, and  
12 the general public concerning effective means available to  
13 implement the provisions of section 6(h) prohibiting wage  
14 rate discrimination between employees performing work in  
15 equivalent jobs on the basis of sex, race, or national origin.  
16 Such studies, information, and technical assistance shall  
17 be based on and include reference to the objectives of such  
18 section to eliminate such discrimination. In order to  
19 achieve the objectives of such section, the Equal Employ-  
20 ment Opportunity Commission shall carry on a continuing  
21 program of research, education, and technical assistance  
22 including—

23 “(A) conducting and promoting research with  
24 the intent of developing means to expeditiously cor-

1 rect the wage rate differentials described in section  
2 6(h);

3 “(B) publishing and otherwise making available  
4 to employers, labor organizations, professional asso-  
5 ciations, educational institutions, the various media  
6 of communication, and the general public the find-  
7 ings of studies and other materials for promoting  
8 compliance with section 6(h);

9 “(C) sponsoring and assisting State and com-  
10 munity informational and educational programs; and

11 “(D) providing technical assistance to employ-  
12 ers, labor organizations, professional associations,  
13 and other interested persons on means of achieving  
14 and maintaining compliance with the provisions of  
15 section 6(h).

16 “(5) The report submitted biennially by the Secretary  
17 to Congress under paragraph (1) shall include a separate  
18 evaluation and appraisal regarding the implementation of  
19 section 6(h).”.

20 **SEC. 8. CONFORMING AMENDMENTS.**

21 (a) CONGRESSIONAL EMPLOYEES.—

22 (1) APPLICATION.—Section 203(a)(1) of the  
23 Congressional Accountability Act of 1995 (2 U.S.C.  
24 1313(a)(1)) is amended—

1 (A) by striking “subsections (a)(1) and (d)  
2 of section 6” and inserting “subsections (a)(1),  
3 (d), and (h) of section 6”; and

4 (B) by striking “206 (a)(1) and (d)” and  
5 inserting “206(a)(1), (d), and (h)”.

6 (2) REMEDIES.—Section 203(b) of such Act (2  
7 U.S.C. 1313(b)) is amended by inserting before the  
8 period the following: “or, in an appropriate case,  
9 under section 16(f) of such Act (29 U.S.C. 216(f))”.

10 (b) EXECUTIVE BRANCH EMPLOYEES.—

11 (1) APPLICATION.—Section 413(a)(1) of title 3,  
12 United States Code, is amended by striking “sub-  
13 sections (a)(1) and (d) of section 6” and inserting  
14 “subsections (a)(1), (d), and (h) of section 6”.

15 (2) REMEDIES.—Section 413(b) of such title is  
16 amended by inserting before the period the fol-  
17 lowing: “or, in an appropriate case, under section  
18 16(f) of such Act”.

19 **SEC. 9. EFFECTIVE DATE.**

20 The amendments made by this Act shall take effect  
21 1 year after the date of enactment of this Act.

○