

114TH CONGRESS
1ST SESSION

S. 2070

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

SEPTEMBER 22, 2015

Ms. AYOTTE 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 “Gender Advancement
5 in Pay Act” or the “GAP Act”.

1 **SEC. 2. ENHANCED PROHIBITION ON WAGE DISCRIMINA-**
 2 **TION.**

3 Section 6(d) of the Fair Labor Standards Act of
 4 1938 (29 U.S.C. 206(d)) is amended—

5 (1) in paragraph (1)—

6 (A) in clause (iii), by striking “or” at the
 7 end;

8 (B) by redesignating clause (iv) as clause
 9 (vi);

10 (C) by inserting before clause (vi), as re-
 11 designated by subparagraph (B) of this para-
 12 graph, the following: “(iv) a differential based
 13 on expertise; (v) a shift differential; or”; and

14 (D) in clause (vi), as redesignated by sub-
 15 paragraph (B) of this paragraph, by striking
 16 “any other factor other than sex” and inserting
 17 “a business-related factor other than sex, in-
 18 cluding but not limited to education, training,
 19 or experience”;

20 (2) by redesignating paragraph (4) as para-
 21 graph (5); and

22 (3) by inserting after paragraph (3) the fol-
 23 lowing:

24 “(4) If a charge is filed by or on behalf of an em-
 25 ployee for a violation of title VII of the Civil Rights Act
 26 of 1964 (42 U.S.C. 2000e et seq.), and an action is

1 brought by or on behalf of the employee for a violation
 2 of this subsection, with respect to the same practice, or
 3 if an action is brought before the Equal Employment Op-
 4 portunity Commission by or on behalf of the employee for
 5 a violation of this subsection, the statute of limitations for
 6 the action involved under section 6 of the Portal-to-Portal
 7 Act of 1947 (29 U.S.C. 255) shall be tolled until the ear-
 8 lier of—

9 “(A) the date on which the Equal Employment
 10 Opportunity Commission or the Attorney General
 11 brings an action or provides notification to the em-
 12 ployee with respect to the charge under section
 13 706(f)(1) of the Civil Rights Act of 1964 (42 U.S.C.
 14 2000e-5(f)(1)); or

15 “(B) the date that is 270 days after the date
 16 on which such charge is filed.”.

17 **SEC. 3. NONRETALIATION PROVISION.**

18 Section 15 of the Fair Labor Standards Act of 1938
 19 (29 U.S.C. 215) is amended—

20 (1) in subsection (a)(3), by striking “employee
 21 has filed” and all that follows and inserting “em-
 22 ployee—

23 “(A) has made a charge or filed any com-
 24 plaint or instituted or caused to be instituted
 25 any investigation, proceeding, hearing, or action

1 under or related to this Act, including an inves-
2 tigation conducted by the employer, or has tes-
3 tified or is planning to testify or has assisted or
4 participated in any manner in any such inves-
5 tigation, proceeding, hearing, or action, or has
6 served or is planning to serve on an industry
7 committee; or

8 “(B) has inquired about, discussed, or dis-
9 closed the wages of the employee or another
10 employee, or has declined to discuss or disclose
11 the wages of the employee;” and

12 (2) by adding at the end the following:

13 “(c)(1) Subsection (a)(3)(B) shall not apply to an in-
14 stance in which an employee who has access to the wage
15 information of other employees as a part of such employ-
16 ee’s essential job functions discloses the wages of any of
17 such other employees to an individual who does not other-
18 wise have access to such information, unless such disclo-
19 sure is in response to a charge or complaint or in further-
20 ance of an investigation, proceeding, hearing, or action
21 under or related to section 6(d), including an investigation
22 conducted by the employer.

23 “(2) Subsection (a)(3)(B) shall not apply to an in-
24 stance in which an employee engages in an inquiry, discus-

1 sion, or disclosure that is prohibited by the terms and con-
 2 ditions of a provision, applicable to the employee, of—

3 “(A) a confidential settlement;

4 “(B) a severance agreement;

5 “(C) a noncompete, nondisclosure, or non-
 6 disparagement clause of an agreement; or

7 “(D) any post-employment agreement similar to
 8 an agreement described in subparagraph (A) or (B),
 9 or a clause described in subparagraph (C).

10 “(3) Any employer who requires an employee to sign
 11 a contract or waiver (other than a provision described in
 12 paragraph (2)) that would prohibit the employee from dis-
 13 closing information about the employee’s wages shall be
 14 considered to have committed an unlawful act under sub-
 15 section (a)(3)(B).

16 “(4) Nothing in this subsection shall be construed to
 17 limit the rights of an employee provided under any other
 18 provision of law.”.

19 **SEC. 4. CIVIL PENALTY.**

20 Section 16(e) of the Fair Labor Standards Act of
 21 1938 (29 U.S.C. 216(e)) is amended—

22 (1) in paragraph (2)—

23 (A) by striking “(2)” and inserting

24 “(2)(A)”; and

25 (B) by adding at the end the following:

1 “(B)(i) Any person who willfully violates section 6(d)
2 shall be subject to—

3 “(I) a civil penalty in an amount described in
4 clause (ii) for each employee affected (less the
5 amount of any penalty the person has paid under
6 State law for the wage differential involved); and

7 “(II) any penalty that may apply under sub-
8 paragraph (A).

9 “(ii) The amount referred to in clause (i)(I) shall
10 be—

11 “(I) for an employer with not more than 100
12 employees, the lesser of the amount of the liquidated
13 damages available under subsection (b) or (c), or
14 \$2,500;

15 “(II) for an employer with not less than 101
16 and not more than 200 employees, the lesser of the
17 amount of the liquidated damages available under
18 subsection (b) or (c), or \$5,000;

19 “(III) for an employer with not less than 201
20 and not more than 500 employees, the lesser of the
21 amount of the liquidated damages available under
22 subsection (b) or (c), or \$10,000; and

23 “(IV) for an employer with not less than 501
24 employees, the lesser of the amount of the liquidated

1 damages available under subsection (b) or (c), or
 2 \$15,000.”;

3 (2) in paragraph (3), in the first sentence, by
 4 striking “this subsection” and inserting “this sub-
 5 section (other than paragraph (2)(B)); and

6 (3) in paragraph (5)—

7 (A) in the first sentence, by striking “vio-
 8 lations of section 12” and inserting “violations
 9 of section 6(d) or section 12”; and

10 (B) by inserting after the first sentence
 11 the following: “Civil penalties collected for viola-
 12 tions of section 6(d) shall be deposited in the
 13 account created under section 5(d) of the GAP
 14 Act.”.

15 **SEC. 5. STUDY ON HIGH-WAGE, HIGH-DEMAND OCCUPA-**
 16 **TIONS AND EQUIVALENT PAY.**

17 (a) **JOINT STUDY.**—Using funds from the account
 18 created under subsection (d), the Secretary of Labor, to-
 19 gether with the Secretary of Education, shall conduct a
 20 multistate study, through a grant to a nonprofit research
 21 institution, that includes strategies to increase the partici-
 22 pation of women in—

23 (1) high-wage, high-demand occupations; and

24 (2) industries in which women are underrep-
 25 resented.

1 (b) COMPTROLLER GENERAL STUDY.—Using funds
2 from the account created under subsection (d), the Comp-
3 troller General of the United States shall conduct a
4 multistate study to develop strategies described in sub-
5 section (a).

6 (c) REPORTS.—Not later than 2 years after the date
7 of enactment of this Act—

8 (1) the Secretary of Labor and the Secretary of
9 Education shall submit to Congress a report con-
10 taining—

11 (A) a statement of the findings and conclu-
12 sions of the study under subsection (a); and

13 (B) any recommendations the Secretary of
14 Labor and the Secretary of Education consider
15 appropriate based on their conclusions;

16 (2) the Comptroller General shall submit to
17 Congress a report containing—

18 (A) a statement of the findings and conclu-
19 sions of the study under subsection (b); and

20 (B) any recommendations the Comptroller
21 General considers appropriate based on its con-
22 clusions; and

23 (3) the Secretary of Labor, the Secretary of
24 Education, and the Comptroller General shall make

1 available to the public the reports described in this
2 subsection.

3 (d) ACCOUNTS.—

4 (1) IN GENERAL.—The Secretary of Labor shall
5 create an account to manage the funds required to
6 conduct the studies under subsections (a) and (b)
7 and to complete the reports under subsection (c).
8 The account shall contain the civil penalties collected
9 under section 16(e)(2) of the Fair Labor Standards
10 Act of 1938 (29 U.S.C. 216(e)(2)).

11 (2) WITHDRAWAL OF FUNDS.—The Secretary
12 of Labor is authorized to withdraw funds from the
13 account created under subsection (d) to carry out
14 the joint study under subsection (a).

15 (3) TRANSFER OF FUNDS.—At the request of
16 the Comptroller General, the Secretary of Labor
17 shall transfer to the Comptroller General the funds
18 required to carry out the study under subsection (b).

19 **SEC. 6. SMALL BUSINESS ASSISTANCE.**

20 (a) EFFECTIVE DATE.—This Act and the amend-
21 ments made by this Act shall take effect on the date that
22 is 6 months after the date of enactment of this Act.

23 (b) TECHNICAL ASSISTANCE MATERIALS.—The Sec-
24 retary of Labor and the Equal Employment Opportunity
25 Commission shall jointly develop technical assistance ma-

1 terials to assist small businesses in complying with the re-
2 quirements of this Act and the amendments made by this
3 Act.

4 (c) SMALL BUSINESSES.—A small business shall be
5 exempt from the provisions of this Act, and the amend-
6 ments made by this Act, to the same extent that such busi-
7 ness is exempt from the requirements of the Fair Labor
8 Standards Act of 1938 pursuant to clauses (i) and (ii)
9 of section 3(s)(1)(A) of such Act (29 U.S.C.
10 203(s)(1)(A)).

11 **SEC. 7. RULE OF CONSTRUCTION.**

12 Nothing in this Act, or in any amendment made by
13 this Act, shall affect the obligation of employers and em-
14 ployees to fully comply with all applicable immigration
15 laws, including any penalties, fines, or other sanctions.

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