

116TH CONGRESS  
1ST SESSION

# H. R. 2039

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 2, 2019

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

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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.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Fair Pay Act of 2019”.

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) Discrimination in hiring and promotion has  
11 played a role in maintaining a segregated work  
12 force.

13 (3) Many women and people of color work in  
14 occupations dominated by individuals of their same  
15 sex, race, and national origin.

16 (A) While a wage rate differential exists in  
17 nearly every occupational field, traditionally  
18 male jobs tend to pay better than traditionally  
19 female jobs which require equal skill, effort, and  
20 responsibility, and which are performed under  
21 similar working conditions.

22 (B) Traditionally male jobs that are low-  
23 wage require less skill, education, and certifi-  
24 cations than traditionally female jobs that are

1 low-wage, despite their generally receiving high-  
2 er pay.

3 (4) In 2015, a woman in the United States  
4 working in a full-time, year-round job earned 80  
5 cents for every dollar earned by a man working in  
6 a full-time, year-round job.

7 (A) The wage gap is larger when the data  
8 is disaggregated by race. Among women who  
9 hold full-time, year-round jobs in the United  
10 States, African-American women were paid on  
11 average, only 63 percent of what White men  
12 were paid in 2015, while Native Hawaiian and  
13 Other Pacific Islander women were paid 60 per-  
14 cent, American Indian and Alaska Native  
15 women were paid 58 percent, and Hispanic and  
16 Latina women were paid only 54 percent.

17 (B) The gender pay gap persists across  
18 educational levels. As a result, women who com-  
19 plete college degrees are less able to pay off  
20 their student loans promptly, leaving them pay-  
21 ing more and for a longer time than men. In  
22 2012, among students who graduated in 2007–  
23 2008, women working full time had paid off 33  
24 percent of their student loan debt on average,

1 while men working full time had paid off 44  
2 percent of their debt.

3 (C) In the United States, mothers are pri-  
4 mary or sole breadwinners in nearly 40 percent  
5 of families. Yet the wage gap for mothers is  
6 larger than for women overall. According to  
7 2013 data, mothers employed full time, year  
8 round are paid 71 cents for every dollar paid to  
9 fathers. It is worse for single mothers with full-  
10 time, year-round jobs, who are paid just 58  
11 cents for every dollar paid to fathers.

12 (D) A conservative estimate is that women  
13 employed in the United States lose a combined  
14 total of nearly \$500 billion every year due to  
15 the wage gap. These women, their families,  
16 businesses and the economy suffer as a result.  
17 Lost wages mean families have less money to  
18 save for the future or to spend on basic goods  
19 and services—spending that helps drive the  
20 economy.

21 (E) Statistical analysis shows that 62 per-  
22 cent of the wage gap can be attributed to occu-  
23 pational and industry differences; differences in  
24 experience and education; and factors such as  
25 race, region and unionization. That leaves 38

1 percent of the gap unaccounted for, leading re-  
2 searchers to conclude that factors such as dis-  
3 crimination and unconscious bias continue to  
4 affect women’s wages.

5 (5) The existence of such wage rate differen-  
6 tials—

7 (A) depresses wages and living standards  
8 for employees necessary for their health and ef-  
9 ficiency;

10 (B) prevents the maximum utilization of  
11 the available labor resources;

12 (C) tends to cause labor disputes, thereby  
13 burdening, affecting, and obstructing com-  
14 merce;

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

17 (E) constitutes an unfair method of com-  
18 petition; and

19 (F) contributes to poor living conditions,  
20 poor nutrition, and fewer opportunities for fam-  
21 ilies with children under 18 where the mother  
22 is the sole or primary breadwinner.

23 (6) Section 6(d) of the Fair Labor Standards  
24 Act of 1938 prohibits discrimination in compensa-  
25 tion for “equal work” on the basis of sex.

1           (7) Artificial barriers to the elimination of dis-  
2           crimination in compensation based upon sex, race,  
3           and national origin continue to exist more than five  
4           decades after the passage of section 6(d) of the Fair  
5           Labor Standards Act of 1938, the Equal Pay Act of  
6           1963, and the Civil Rights Act of 1964 (42 U.S.C.  
7           2000a et seq.). Elimination of such barriers would  
8           have positive effects.

9           (A) Problems in the economy created by  
10          discrimination through wage rate differentials  
11          would be reduced. In 2012, the U.S. economy  
12          would have produced additional income of  
13          \$447.6 billion if women received equal pay; this  
14          represents 2.9 percent of 2012 gross domestic  
15          product.

16          (B) Fewer working women and people of  
17          color would earn low wages, thereby reducing  
18          dependence on public assistance. The total in-  
19          crease in women's earnings with pay equity rep-  
20          resents more than 14 times what the Federal  
21          and State governments spent in fiscal year  
22          2012 on Temporary Assistance to Needy Fami-  
23          lies.

24          (C) Working family members earning a  
25          fair rate of pay would encourage stable families

1           and reduce poverty. The poverty rate for all  
2           working women would be cut in half, falling to  
3           3.9 percent from 8.1 percent. The very high  
4           poverty rate for working single mothers would  
5           fall by nearly half, from 28.7 percent to 15.0  
6           percent, and two-thirds would receive a pay in-  
7           crease.

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, nor shall such employer  
23          between such employees on the basis of sex, race, or na-  
24          tional origin in any other terms, conditions, privileges, or  
25          benefits of employment.

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

4           “(i) a seniority system;

5           “(ii) a merit system;

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

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

12           “(I) the employer demonstrates that—

13            “(aa) such factor—

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

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

1                   “(bb) such factor was actually applied  
2                   and used reasonably in light of the as-  
3                   serted justification; and

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

10                  “(C) The Equal Employment Opportunity Commis-  
11                  sion shall issue guidelines specifying criteria for deter-  
12                  mining whether a job is dominated by employees of a par-  
13                  ticular sex, race, or national origin for purposes of sub-  
14                  paragraph (B)(iv). Such guidelines shall not include a list  
15                  of such jobs.

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

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

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

6       “(4) In this subsection:

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

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

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

22 **SEC. 4. PROHIBITED ACTS.**

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

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

1 (2) by adding after paragraph (5) the following:

2 “(6) to discriminate against any individual be-  
3 cause such individual has opposed any act or prac-  
4 tice made unlawful by section 6(h) or because such  
5 individual made a charge, testified, assisted, or par-  
6 ticipated in any manner in an investigation, pro-  
7 ceeding, or hearing to enforce section 6(h); or

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

17 **SEC. 5. REMEDIES.**

18 (a) ENHANCED PENALTIES.—Section 16(b) (29  
19 U.S.C. 216(b)) is amended—

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

1           (2) in the sentence beginning “An action to”,  
2           by striking “either of the preceding sentences” and  
3           inserting “any of the preceding sentences of this  
4           subsection”;

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

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

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

17          (b) ACTION BY SECRETARY.—Section 16(c) (29  
18 U.S.C. 216(c)) is amended—

19           (1) in the first sentence—

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

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

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

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

19 **SEC. 6. RECORDS.**

20 (a) RECORDS.—Section 11(c) (29 U.S.C. 211(c)) is  
21 amended—

22 (1) by inserting “(1)” after “(c)”; and

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

24 “(2) Every employer subject to section 6(h) shall pre-  
25 serve records that document and support the method, sys-

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

12 (b) SMALL BUSINESS EXEMPTIONS.—Section 11(c)  
13 (as amended by subsection (a)) is further amended by  
14 adding at the end the following:

15 “(3) Every employer subject to section 6(h) that has  
16 25 or more employees on any date during the first or sec-  
17 ond year after the effective date of this paragraph, or 15  
18 or more employees on any date during any subsequent  
19 year after such second year, shall, in accordance with reg-  
20 ulations promulgated by the Equal Employment Oppor-  
21 tunity Commission under paragraph (8), prepare and sub-  
22 mit to the Equal Employment Opportunity Commission  
23 for the year involved a report signed by the president,  
24 treasurer, or corresponding principal officer, of the em-  
25 ployer that includes information that discloses the wage

1 rates paid to employees of the employer in each classifica-  
2 tion, position, or job title, or to employees in other wage  
3 groups employed by the employer, including information  
4 with respect to the sex, race, and national origin of em-  
5 ployees at each wage rate in each classification, position,  
6 job title, or other wage group.”.

7 (c) PROTECTION OF CONFIDENTIALITY.—Section  
8 11(c) (as amended by subsections (a) and (b)) is further  
9 amended by adding at the end the following:

10 “(4) The rules and regulations promulgated by the  
11 Equal Employment Opportunity Commission under para-  
12 graph (8), relating to the form of such a report, shall in-  
13 clude requirements to protect the confidentiality of em-  
14 ployees, including a requirement that the report shall not  
15 contain the name of any individual employee.”.

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

20 “(5) The Equal Employment Opportunity Commis-  
21 sion may publish any information and data that the Equal  
22 Employment Opportunity Commission obtains pursuant to  
23 the provisions of paragraph (3). The Equal Employment  
24 Opportunity Commission may use the information and  
25 data for statistical and research purposes, and compile

1 and publish such studies, analyses, reports, and surveys  
2 based on the information and data as the Equal Employ-  
3 ment Opportunity Commission may consider appropriate.

4       “(6) In order to carry out the purposes of this Act,  
5 the Equal Employment Opportunity Commission shall by  
6 regulation make reasonable provision for the inspection  
7 and examination by any person of the information and  
8 data contained in any report submitted to the Equal Em-  
9 ployment Opportunity Commission pursuant to paragraph  
10 (3).

11       “(7) The Equal Employment Opportunity Commis-  
12 sion shall by regulation provide for the furnishing of copies  
13 of reports submitted to the Equal Employment Oppor-  
14 tunity Commission pursuant to paragraph (3) to any per-  
15 son upon payment of a charge based upon the cost of the  
16 service.

17       “(8) The Equal Employment Opportunity Commis-  
18 sion shall issue rules and regulations prescribing the form  
19 and content of reports required to be submitted under  
20 paragraph (3) and such other reasonable rules and regula-  
21 tions as the Equal Employment Opportunity Commission  
22 may find necessary to prevent the circumvention or eva-  
23 sion of such reporting requirements. In exercising the au-  
24 thority of the Equal Employment Opportunity Commis-  
25 sion under paragraph (3), the Equal Employment Oppor-

1 tunity Commission may prescribe by general rule sim-  
2 plified reports for employers for whom the Equal Employ-  
3 ment Opportunity Commission finds that because of the  
4 size of the employers a detailed report would be unduly  
5 burdensome.”.

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

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

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

24 “(A) conducting and promoting research with  
25 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, as added by section 2(a) of the  
13 Presidential and Executive Office Accountability Act  
14 (Public Law 104–331; 110 Stat. 4053), is amended  
15 by striking “subsections (a)(1) and (d) of section 6”  
16 and inserting “subsections (a)(1), (d), and (h) of  
17 section 6”.

18 (2) REMEDIES.—Section 413(b) of such title is  
19 amended by inserting before the period the fol-  
20 lowing: “or, in an appropriate case, under section  
21 16(f) of such Act”.

22 **SEC. 9. EFFECTIVE DATE.**

23 The amendments made by this Act shall take effect  
24 1 year after the date of enactment of this Act.

○