

117TH CONGRESS
1ST SESSION

H. R. 7

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

JANUARY 28, 2021

Ms. DELAURO (for herself, Ms. ADAMS, Mr. AGUILAR, Mr. ALLRED, Mr. AUCHINCLOSS, Mrs. AXNE, Ms. BARRAGÁN, Mrs. BEATTY, Mr. BERA, Mr. BEYER, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Ms. BOURDEAUX, Mr. BOWMAN, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BROWN, Ms. BROWNLEY, Ms. BUSH, Mrs. BUSTOS, Mr. BUTTERFIELD, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARSON, Mr. CARTWRIGHT, Mr. CASE, Mr. CASTEN, Ms. CASTOR of Florida, Mr. CASTRO of Texas, Ms. CHU, Mr. CICILLINE, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. CLEAVER, Mr. CLYBURN, Mr. COHEN, Mr. CONNOLLY, Mr. COOPER, Mr. CORREA, Mr. COSTA, Mr. COURTNEY, Ms. CRAIG, Mr. CROW, Mr. CUELLAR, Ms. DAVIDS of Kansas, Mr. DANNY K. DAVIS of Illinois, Ms. DEAN, Mr. DEFazio, Ms. DEGETTE, Ms. DELBENE, Mr. DELGADO, Mrs. DEMINGS, Mr. DESAULNIER, Mr. DEUTCH, Mrs. DINGELL, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. DOGGETT, Ms. ESCOBAR, Ms. ESHOO, Mr. ESPAILLAT, Mr. EVANS, Mrs. FLETCHER, Mr. FOSTER, Ms. LOIS FRANKEL of Florida, Mr. GALLEG0, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Ms. GARCIA of Texas, Mr. GOLDEN, Mr. GOMEZ, Mr. VICENTE GONZALEZ of Texas, Mr. GOTTHEIMER, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. HARDER of California, Mr. HASTINGS, Mrs. HAYES, Mr. HIGGINS of New York, Mr. HIMES, Mr. HORSFORD, Ms. HOULAHAN, Mr. HOYER, Mr. HUFFMAN, Ms. JACKSON LEE, Ms. JACOBS of California, Ms. JAYAPAL, Mr. JEFFRIES, Ms. JOHNSON of Texas, Mr. JOHNSON of Georgia, Mr. JONES, Mr. KAHELE, Ms. KAPTUR, Mr. KEATING, Ms. KELLY of Illinois, Mr. KHANNA, Mr. KILDEE, Mr. KILMER, Mr. KIM of New Jersey, Mr. KIND, Mrs. KIRKPATRICK, Mr. KRISHNAMOORTHY, Ms. KUSTER, Mr. LAMB, Mr. LANGEVIN, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mrs. LAWRENCE, Mr. LAWSON of Florida, Ms. LEE of California, Mrs. LEE of Nevada, Ms. LEGER FERNANDEZ, Mr. LEVIN of Michigan, Mr. LEVIN of California, Mr. LIEU, Ms. LOFGREN, Mr. LOWENTHAL, Mrs. LURIA, Mr. LYNCH, Mr. MALINOWSKI, Mrs. CAROLYN B. MALONEY of New York, Mr. SEAN PATRICK MALONEY of New York, Ms. MANNING,

Ms. MATSUI, Mrs. MCBATH, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCGOVERN, Mr. MCNERNEY, Mr. MEEKS, Ms. MENG, Mr. MFUME, Ms. MOORE of Wisconsin, Mr. MORELLE, Mr. MOULTON, Mrs. MURPHY of Florida, Mr. MRVAN, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEGUSE, Mr. NEAL, Ms. NEWMAN, Mr. NORCROSS, Ms. NORTON, Ms. OCASIO-CORTEZ, Mr. O'HALLERAN, Ms. OMAR, Mr. PALLONE, Mr. PANETTA, Mr. PAPPAS, Mr. PASCRELL, Mr. PAYNE, Ms. PELOSI, Mr. PERLMUTTER, Mr. PETERS, Mr. PHILLIPS, Ms. PINGREE, Ms. PLASKETT, Mr. POCAN, Ms. PORTER, Ms. PRESSLEY, Mr. PRICE of North Carolina, Mr. QUIGLEY, Mr. RASKIN, Miss RICE of New York, Ms. ROSS, Ms. ROYBAL-ALLARD, Mr. RUIZ, Mr. RUPPERSBERGER, Mr. RUSH, Mr. RYAN, Mr. SABLAN, Mr. SAN NICOLAS, Ms. SÁNCHEZ, Mr. SARBANES, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCHNEIDER, Mr. SCHRADER, Ms. SCHRIER, Mr. DAVID SCOTT of Georgia, Mr. SCOTT of Virginia, Ms. SEWELL, Mr. SHERMAN, Ms. SHERRILL, Mr. SIRES, Ms. SLOTKIN, Mr. SMITH of Washington, Mr. SOTO, Ms. SPANBERGER, Ms. SPEIER, Mr. STANTON, Ms. STEVENS, Ms. STRICKLAND, Mr. SUOZZI, Mr. SWALWELL, Mr. TAKANO, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Ms. TITUS, Ms. TLAIB, Mr. TONKO, Mrs. TORRES of California, Mr. TORRES of New York, Mrs. TRAHAN, Mr. TRONE, Ms. UNDERWOOD, Mr. VARGAS, Mr. VEASEY, Mr. VELA, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WEXTON, Ms. WILD, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, Mr. YARMUTH, Mr. SMITH of New Jersey, Mr. FITZPATRICK, Mr. CRIST, and Ms. BASS) introduced the following bill; which was referred to the Committee on Education and Labor

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 finds the following:

3 (1) Women have entered the workforce in
4 record numbers over the past 50 years.

5 (2) Despite the enactment of the Equal Pay Act
6 of 1963, many women continue to earn significantly
7 lower pay than men for equal work. These pay dis-
8 parities exist in both the private and governmental
9 sectors. Pay disparities are especially severe for
10 women and girls of color.

11 (3) In many instances, the pay disparities can
12 only be due to continued intentional discrimination
13 or the lingering effects of past discrimination. After
14 controlling for educational attainment, occupation,
15 industry, union status, race, ethnicity, and labor
16 force experience roughly 40 percent of the pay gap
17 remains unexplained.

18 (4) The existence of such pay disparities—

19 (A) depresses the wages of working fami-
20 lies who rely on the wages of all members of the
21 family to make ends meet;

22 (B) undermines women's retirement secu-
23 rity, which is often based on earnings while in
24 the workforce;

1 (C) prevents women from realizing their
2 full economic potential, particularly in terms of
3 labor force participation and attachment;

4 (D) has been spread and perpetuated,
5 through commerce and the channels and instru-
6 mentalities of commerce, among the workers of
7 the several States;

8 (E) burdens commerce and the free flow of
9 goods in commerce;

10 (F) constitutes an unfair method of com-
11 petition in commerce;

12 (G) tends to cause labor disputes, as evi-
13 denced by the tens of thousands of charges filed
14 with the Equal Employment Opportunity Com-
15 mission against employers between 2010 and
16 2016;

17 (H) interferes with the orderly and fair
18 marketing of goods in commerce; and

19 (I) in many instances, may deprive workers
20 of equal protection on the basis of sex in viola-
21 tion of the 5th and 14th Amendments to the
22 Constitution.

23 (5)(A) Artificial barriers to the elimination of
24 discrimination in the payment of wages on the basis
25 of sex continue to exist decades after the enactment

1 of the Fair Labor Standards Act of 1938 (29 U.S.C.
2 201 et seq.) and the Civil Rights Act of 1964 (42
3 U.S.C. 2000a et seq.).

4 (B) These barriers have resulted, in significant
5 part, because the Equal Pay Act of 1963 has not
6 worked as Congress originally intended. Improve-
7 ments and modifications to the law are necessary to
8 ensure that the Act provides effective protection to
9 those subject to pay discrimination on the basis of
10 their sex.

11 (C) Elimination of such barriers would have
12 positive effects, including—

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

15 (ii) substantially reducing the number of
16 working women earning unfairly low wages,
17 thereby reducing the dependence on public as-
18 sistance;

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

21 (iv) remedying the effects of past discrimi-
22 nation on the basis of sex and ensuring that in
23 the future workers are afforded equal protection
24 on the basis of sex; and

1 (v) ensuring equal protection pursuant to
2 Congress' power to enforce the 5th and 14th
3 Amendments to the Constitution.

4 (6) The Department of Labor and the Equal
5 Employment Opportunity Commission carry out
6 functions to help ensure that women receive equal
7 pay for equal work.

8 (7) The Department of Labor is responsible
9 for—

10 (A) collecting and making publicly avail-
11 able information about women's pay;

12 (B) ensuring that companies receiving
13 Federal contracts comply with anti-discrimina-
14 tion affirmative action requirements of Execu-
15 tive Order 11246 (relating to equal employment
16 opportunity);

17 (C) disseminating information about wom-
18 en's rights in the workplace;

19 (D) helping women who have been victims
20 of pay discrimination obtain a remedy; and

21 (E) investigating and prosecuting systemic
22 gender based pay discrimination involving gov-
23 ernment contractors.

24 (8) The Equal Employment Opportunity Com-
25 mission is the primary enforcement agency for

1 claims made under the Equal Pay Act of 1963, and
2 issues regulations and guidance on appropriate in-
3 terpretations of the law.

4 (9) Vigorous implementation by the Depart-
5 ment of Labor and the Equal Employment Oppor-
6 tunity Commission, increased information as a result
7 of the amendments made by this Act, wage data,
8 and more effective remedies, will ensure that women
9 are better able to recognize and enforce their rights.

10 (10) Certain employers have already made
11 great strides in eradicating unfair pay disparities in
12 the workplace and their achievements should be rec-
13 ognized.

14 **SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**
15 **QUIREMENTS.**

16 (a) BONA FIDE FACTOR DEFENSE AND MODIFICA-
17 TION OF SAME ESTABLISHMENT REQUIREMENT.—Section
18 6(d)(1) of the Fair Labor Standards Act of 1938 (29
19 U.S.C. 206(d)(1)) is amended—

20 (1) by striking “No employer having” and in-
21 serting “(A) No employer having”;

22 (2) by striking “any other factor other than
23 sex” and inserting “a bona fide factor other than
24 sex, such as education, training, or experience”; and

25 (3) by inserting at the end the following:

1 “(B) The bona fide factor defense described in sub-
2 paragraph (A)(iv) shall apply only if the employer dem-
3 onstrates that such factor (i) is not based upon or derived
4 from a sex-based differential in compensation; (ii) is job-
5 related with respect to the position in question; (iii) is con-
6 sistent with business necessity; and (iv) accounts for the
7 entire differential in compensation at issue. Such defense
8 shall not apply where the employee demonstrates that an
9 alternative employment practice exists that would serve
10 the same business purpose without producing such dif-
11 ferential and that the employer has refused to adopt such
12 alternative practice.

13 “(C) For purposes of subparagraph (A), employees
14 shall be deemed to work in the same establishment if the
15 employees work for the same employer at workplaces lo-
16 cated in the same county or similar political subdivision
17 of a State. The preceding sentence shall not be construed
18 as limiting broader applications of the term ‘establish-
19 ment’ consistent with rules prescribed or guidance issued
20 by the Equal Employment Opportunity Commission.”.

21 (b) NONRETALIATION PROVISION.—Section 15 of the
22 Fair Labor Standards Act of 1938 (29 U.S.C. 215) is
23 amended—

24 (1) in subsection (a)—

1 (A) in paragraph (3), by striking “em-
2 ployee has filed” and all that follows and insert-
3 ing “employee—

4 “(A) has made a charge or filed any com-
5 plaint or instituted or caused to be instituted
6 any investigation, proceeding, hearing, or action
7 under or related to this Act, including an inves-
8 tigation conducted by the employer, or has tes-
9 tified or is planning to testify or has assisted or
10 participated in any manner in any such inves-
11 tigation, proceeding, hearing or action, or has
12 served or is planning to serve on an industry
13 committee; or

14 “(B) has inquired about, discussed, or dis-
15 closed the wages of the employee or another
16 employee (such as by inquiring or discussing
17 with the employer why the wages of the em-
18 ployee are set at a certain rate or salary);”;

19 (B) in paragraph (5), by striking the pe-
20 riod at the end and inserting “; or”; and

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

22 “(6) to require an employee to sign a contract
23 or waiver that would prohibit the employee from dis-
24 closing information about the employee’s wages.”;
25 and

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

2 “(c) Subsection (a)(3)(B) shall not apply to instances
3 in which an employee who has access to the wage informa-
4 tion of other employees as a part of such employee’s essen-
5 tial job functions discloses the wages of such other employ-
6 ees to individuals who do not otherwise have access to such
7 information, unless such disclosure is in response to a
8 complaint or charge or in furtherance of an investigation,
9 proceeding, hearing, or action under section 6(d), includ-
10 ing an investigation conducted by the employer. Nothing
11 in this subsection shall be construed to limit the rights
12 of an employee provided under any other provision of
13 law.”.

14 (c) 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 section 6(d)
19 shall additionally be liable for such compensatory
20 damages, or, where the employee demonstrates that
21 the employer acted with malice or reckless indiffer-
22 ence, punitive damages as may be appropriate, ex-
23 cept that the United States shall not be liable for
24 punitive damages.”;

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

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

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

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

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

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

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

24 (1) in the first sentence—

1 (A) by inserting “or, in the case of a viola-
2 tion of section 6(d), additional compensatory or
3 punitive damages, as described in subsection
4 (b),” before “and the agreement”; and

5 (B) by inserting before the period the fol-
6 lowing: “, or such compensatory or punitive
7 damages, as appropriate”;

8 (2) in the second sentence, by inserting before
9 the period the following: “and, in the case of a viola-
10 tion of section 6(d), additional compensatory or pu-
11 nitive damages, as described in subsection (b)”;

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

15 (4) in the sixth sentence—

16 (A) by striking “commenced in the case”
17 and inserting “commenced—
18 “(1) in the case”;

19 (B) by striking the period and inserting “;
20 or”; and

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

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

1 **SEC. 4. TRAINING.**

2 The Equal Employment Opportunity Commission
3 and the Office of Federal Contract Compliance Programs,
4 subject to the availability of funds appropriated under sec-
5 tion 11, shall provide training to Commission employees
6 and affected individuals and entities on matters involving
7 discrimination in the payment of wages.

8 **SEC. 5. NEGOTIATION SKILLS TRAINING.**

9 (a) PROGRAM AUTHORIZED.—

10 (1) IN GENERAL.—The Secretary of Labor,
11 after consultation with the Secretary of Education,
12 is authorized to establish and carry out a grant pro-
13 gram.

14 (2) GRANTS.—In carrying out the program, the
15 Secretary of Labor may make grants on a competi-
16 tive basis to eligible entities to carry out negotiation
17 skills training programs for the purposes of address-
18 ing pay disparities, including through outreach to
19 women and girls.

20 (3) ELIGIBLE ENTITIES.—To be eligible to re-
21 ceive a grant under this subsection, an entity shall
22 be a public agency, such as a State, a local govern-
23 ment in a metropolitan statistical area (as defined
24 by the Office of Management and Budget), a State
25 educational agency, or a local educational agency, a

1 private nonprofit organization, or a community-
2 based organization.

3 (4) APPLICATION.—To be eligible to receive a
4 grant under this subsection, an entity shall submit
5 an application to the Secretary of Labor at such
6 time, in such manner, and containing such informa-
7 tion as the Secretary of Labor may require.

8 (5) USE OF FUNDS.—An entity that receives a
9 grant under this subsection shall use the funds made
10 available through the grant to carry out an effective
11 negotiation skills training program for the purposes
12 described in paragraph (2).

13 (b) INCORPORATING TRAINING INTO EXISTING PRO-
14 GRAMS.—The Secretary of Labor and the Secretary of
15 Education shall issue regulations or policy guidance that
16 provides for integrating the negotiation skills training, to
17 the extent practicable, into programs authorized under—

18 (1) in the case of the Secretary of Education,
19 the Elementary and Secondary Education Act of
20 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins
21 Career and Technical Education Act of 2006 (20
22 U.S.C. 2301 et seq.), the Higher Education Act of
23 1965 (20 U.S.C. 1001 et seq.), and other programs
24 carried out by the Department of Education that the

1 Secretary of Education determines to be appro-
2 priate; and

3 (2) in the case of the Secretary of Labor, the
4 Workforce Innovation and Opportunity Act (29
5 U.S.C. 3101 et seq.), and other programs carried
6 out by the Department of Labor that the Secretary
7 of Labor determines to be appropriate.

8 (c) REPORT.—Not later than 18 months after the
9 date of enactment of this Act, and annually thereafter,
10 the Secretary of Labor, in consultation with the Secretary
11 of Education, shall prepare and submit to Congress a re-
12 port describing the activities conducted under this section
13 and evaluating the effectiveness of such activities in
14 achieving the purposes of this section.

15 **SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.**

16 (a) IN GENERAL.—Not later than 18 months after
17 the date of enactment of this Act, and periodically there-
18 after, 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 women who are Asian American, Black or African-Amer-
23 ican, Hispanic American or Latino, Native American or
24 Alaska Native, Native Hawaiian or Pacific Islander, and
25 White American), including—

1 (1) conducting and promoting research to de-
2 velop the means to correct expeditiously the condi-
3 tions leading to the pay disparities, with specific at-
4 tention paid to women and girls from historically
5 underrepresented and minority groups;

6 (2) publishing and otherwise making available
7 to employers, labor organizations, professional asso-
8 ciations, educational institutions, the media, and the
9 general public the findings resulting from studies
10 and other materials, relating to eliminating the pay
11 disparities;

12 (3) sponsoring and assisting State, local, and
13 community informational and educational programs;

14 (4) providing information to employers, labor
15 organizations, professional associations, and other
16 interested persons on the means of eliminating the
17 pay disparities; and

18 (5) recognizing and promoting the achievements
19 of employers, labor organizations, and professional
20 associations that have worked to eliminate the pay
21 disparities.

22 (b) REPORT ON GENDER PAY GAP IN TEENAGE
23 LABOR FORCE.—

24 (1) REPORT REQUIRED.—Not later than one
25 year after the date of the enactment of this Act, the

1 Secretary of Labor, acting through the Director of
2 the Women's Bureau and in coordination with the
3 Commissioner of Labor Statistics, shall—

4 (A) submit to Congress a report on the
5 gender pay gap in the teenage labor force; and

6 (B) make the report available on a publicly
7 accessible website of the Department of Labor.

8 (2) ELEMENTS.—The report under subsection
9 (a) shall include the following:

10 (A) An examination of trends and potential
11 solutions relating to the teenage gender pay
12 gap.

13 (B) An examination of how the teenage
14 gender pay gap potentially translates into
15 greater wage gaps in the overall labor force.

16 (C) An examination of overall lifetime
17 earnings and losses for informal and formal
18 jobs for women, including women of color.

19 (D) An examination of the teenage gender
20 pay gap, including a comparison of the average
21 amount earned by males and females, respec-
22 tively, in informal jobs, such as babysitting and
23 other freelance jobs, as well as formal jobs,
24 such as retail, restaurant, and customer service.

25 (E) A comparison of—

1 (i) the types of tasks typically per-
2 formed by women from the teenage years
3 through adulthood within certain informal
4 jobs, such as babysitting and other free-
5 lance jobs, and formal jobs, such as retail,
6 restaurant, and customer service; and

7 (ii) the types of tasks performed by
8 younger males in such positions.

9 (F) Interviews and surveys with workers
10 and employers relating to early gender-based
11 pay discrepancies.

12 (G) Recommendations for—

13 (i) addressing pay inequality for
14 women from the teenage years through
15 adulthood, including such women of color;

16 (ii) addressing any disadvantages ex-
17 perience by young women with respect to
18 work experience and professional develop-
19 ment;

20 (iii) the development of standards and
21 best practices for workers and employees
22 to ensure better pay for young women and
23 the prevention of early inequalities in the
24 workplace; and

1 (iv) expanding awareness for teenage
2 girls on pay rates and employment rights
3 in order to reduce greater inequalities in
4 the overall labor force.

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

7 (a) IN GENERAL.—There is established the Secretary
8 of Labor’s National Award for Pay Equity in the Work-
9 place, which shall be awarded, on an annual basis, to an
10 employer to encourage proactive efforts to comply with
11 section 6(d) of the Fair Labor Standards Act of 1938 (29
12 U.S.C. 206(d)), as amended by this Act.

13 (b) CRITERIA FOR QUALIFICATION.—The Secretary
14 of Labor shall set criteria for receipt of the award, includ-
15 ing a requirement that an employer has made substantial
16 effort to eliminate pay disparities between men and
17 women, and deserves special recognition as a consequence
18 of such effort. The Secretary shall establish procedures for
19 the application and presentation of the award.

20 (c) BUSINESS.—In this section, the term “employer”
21 includes—

22 (1)(A) a corporation, including a nonprofit cor-
23 poration;

24 (B) a partnership;

25 (C) a professional association;

1 (D) a labor organization; and

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

4 (2) an entity carrying out an education referral
5 program, a training program, such as an apprentice-
6 ship or management training program, or a similar
7 program; and

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

11 **SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL**
12 **EMPLOYMENT OPPORTUNITY COMMISSION.**

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

16 “(f)(1) Not later than 18 months after the date of
17 enactment of this subsection, the Commission shall pro-
18 vide for the collection from employers of compensation
19 data and other employment-related data (including hiring,
20 termination, and promotion data) disaggregated by the
21 sex, race, and ethnic identity of employees.

22 “(2) In carrying out paragraph (1), the Commission
23 shall have as its primary consideration the most effective
24 and efficient means for enhancing the enforcement of Fed-
25 eral laws prohibiting pay discrimination. For this purpose,

1 the Commission shall consider factors including the im-
2 position of burdens on employers, the frequency of required
3 reports (including the size of employers required to pre-
4 pare reports), appropriate protections for maintaining
5 data confidentiality, and the most effective format to re-
6 port such data.

7 “(3)(A) For each 12-month reporting period for an
8 employer, the compensation data collected under para-
9 graph (1) shall include, for each range of taxable com-
10 pensation described in subparagraph (B), disaggregated
11 by the categories described in subparagraph (E)—

12 “(i) the number of employees of the employer
13 who earn taxable compensation in an amount that
14 falls within such taxable compensation range; and

15 “(ii) the total number of hours worked by such
16 employees.

17 “(B) Subject to adjustment under subparagraph (C),
18 the taxable compensation ranges described in this sub-
19 paragraph are as follows:

20 “(i) Not more than \$19,239.

21 “(ii) Not less than \$19,240 and not more than
22 \$24,439.

23 “(iii) Not less than \$24,440 and not more than
24 \$30,679.

1 “(iv) Not less than \$30,680 and not more than
2 \$38,999.

3 “(v) Not less than \$39,000 and not more than
4 \$49,919.

5 “(vi) Not less than \$49,920 and not more than
6 \$62,919.

7 “(vii) Not less than \$62,920 and not more than
8 \$80,079.

9 “(viii) Not less than \$80,080 and not more
10 than \$101,919.

11 “(ix) Not less than \$101,920 and not more
12 than \$128,959.

13 “(x) Not less than \$128,960 and not more than
14 \$163,799.

15 “(xi) Not less than \$163,800 and not more
16 than \$207,999.

17 “(xii) Not less than \$208,000.

18 “(C) The Commission may adjust the taxable com-
19 pensation ranges under subparagraph (B)—

20 “(i) if the Commission determines that such ad-
21 justment is necessary to enhance enforcement of
22 Federal laws prohibiting pay discrimination; or

23 “(ii) for inflation, in consultation with the Bu-
24 reau of Labor Statistics.

1 “(D) In collecting data described in subparagraph
2 (A)(ii), the Commission shall provide that, with respect
3 to an employee who the employer is not required to com-
4 pensate for overtime employment under section 7 of the
5 Fair Labor Standards Act of 1938 (29 U.S.C. 207), an
6 employer may report—

7 “(i) in the case of a full-time employee, that
8 such employee works 40 hours per week, and in the
9 case of a part-time employee, that such employee
10 works 20 hours per week; or

11 “(ii) the actual number of hours worked by
12 such employee.

13 “(E) The categories described in this subparagraph
14 shall be determined by the Commission and shall in-
15 clude—

16 “(i) race;

17 “(ii) ethnic identity;

18 “(iii) sex; and

19 “(iv) job categories, including the job categories
20 described in the instructions for the Equal Employ-
21 ment Opportunity Employer Information Report
22 EEO–1, as in effect on the date of the enactment
23 of this subsection.

24 “(F) The Commission shall use the compensation
25 data collected under paragraph (1)—

1 “(i) to enhance—

2 “(I) the investigation of charges filed
3 under section 706 or section 6(d) of the Fair
4 Labor Standards Act of 1938 (29 U.S.C.
5 206(d)); and

6 “(II) the allocation of resources to inves-
7 tigate such charges; and

8 “(ii) for any other purpose that the Commission
9 determines appropriate.

10 “(G) The Commission shall annually make publicly
11 available aggregate compensation data collected under
12 paragraph (1) for the categories described in subpara-
13 graph (E), disaggregated by industry, occupation, and
14 core based statistical area (as defined by the Office of
15 Management and Budget).

16 “(4) The compensation data under paragraph (1)
17 shall be collected from each employer that—

18 “(A) is a private employer that has 100 or
19 more employees, including such an employer that is
20 a contractor with the Federal Government, or a sub-
21 contractor at any tier thereof; or

22 “(B) the Commission determines appropriate.”.

1 **SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**
2 **PAY EQUITY DATA COLLECTION.**

3 (a) BUREAU OF LABOR STATISTICS DATA COLLEC-
4 TION.—The Commissioner of Labor Statistics shall con-
5 tinue to collect data on women workers in the Current
6 Employment Statistics survey.

7 (b) OFFICE OF FEDERAL CONTRACT COMPLIANCE
8 PROGRAMS INITIATIVES.—The Director of the Office of
9 Federal Contract Compliance Programs shall ensure that
10 employees of the Office—

11 (1)(A) shall use the full range of investigatory
12 tools at the Office’s disposal, including pay grade
13 methodology;

14 (B) in considering evidence of possible com-
15 pensation discrimination—

16 (i) shall not limit its consideration to a
17 small number of types of evidence; and

18 (ii) shall not limit its evaluation of the evi-
19 dence to a small number of methods of evalu-
20 ating the evidence; and

21 (C) shall not require a multiple regression anal-
22 ysis or anecdotal evidence for a compensation dis-
23 crimination case;

24 (2) for purposes of its investigative, compliance,
25 and enforcement activities, shall define “similarly
26 situated employees” in a way that is consistent with

1 and not more stringent than the definition provided
2 in item 1 of subsection A of section 10–III of the
3 Equal Employment Opportunity Commission Com-
4 pliance Manual (2000), and shall consider only fac-
5 tors that the Office’s investigation reveals were used
6 in making compensation decisions; and

7 (3) shall implement a survey to collect com-
8 pensation data and other employment-related data
9 (including hiring, termination, and promotion data)
10 and designate not less than half of all nonconstruc-
11 tion contractor establishments each year to prepare
12 and file such survey, and shall review and utilize the
13 responses to such survey to identify contractor es-
14 tablishments for further evaluation and for other en-
15 forcement purposes as appropriate.

16 (c) DEPARTMENT OF LABOR DISTRIBUTION OF
17 WAGE DISCRIMINATION INFORMATION.—The Secretary of
18 Labor shall make readily available (in print, on the De-
19 partment of Labor website, and through any other forum
20 that the Department may use to distribute compensation
21 discrimination information), accurate information on com-
22 pensation discrimination, including statistics, explanations
23 of employee rights, historical analyses of such discrimina-
24 tion, instructions for employers on compliance, and any

1 other information that will assist the public in under-
 2 standing and addressing such discrimination.

3 **SEC. 10. PROHIBITIONS RELATING TO PROSPECTIVE EM-**
 4 **PLOYEES' SALARY AND BENEFIT HISTORY.**

5 (a) IN GENERAL.—The Fair Labor Standards Act of
 6 1938 (29 U.S.C. 201 et seq.) is amended by inserting
 7 after section 7 the following new section:

8 **“SEC. 8. REQUIREMENTS AND PROHIBITIONS RELATING TO**
 9 **WAGE, SALARY, AND BENEFIT HISTORY.**

10 “(a) IN GENERAL.—It shall be an unlawful practice
 11 for an employer to—

12 “(1) rely on the wage history of a prospective
 13 employee in considering the prospective employee for
 14 employment, including requiring that a prospective
 15 employee’s prior wages satisfy minimum or max-
 16 imum criteria as a condition of being considered for
 17 employment;

18 “(2) rely on the wage history of a prospective
 19 employee in determining the wages for such prospec-
 20 tive employee, except that an employer may rely on
 21 wage history if it is voluntarily provided by a pro-
 22 spective employee, after the employer makes an offer
 23 of employment with an offer of compensation to the
 24 prospective employee, to support a wage higher than
 25 the wage offered by the employer;

1 “(3) seek from a prospective employee or any
 2 current or former employer the wage history of the
 3 prospective employee, except that an employer may
 4 seek to confirm prior wage information only after an
 5 offer of employment with compensation has been
 6 made to the prospective employee and the prospec-
 7 tive employee responds to the offer by providing
 8 prior wage information to support a wage higher
 9 than that offered by the employer; or

10 “(4) discharge or in any other manner retaliate
 11 against any employee or prospective employee be-
 12 cause the employee or prospective employee—

13 “(A) opposed any act or practice made un-
 14 lawful by this section; or

15 “(B) took an action for which discrimina-
 16 tion is forbidden under section 15(a)(3).

17 “(b) DEFINITION.—In this section, the term ‘wage
 18 history’ means the wages paid to the prospective employee
 19 by the prospective employee’s current employer or previous
 20 employer.”.

21 (b) PENALTIES.—Section 16 of such Act (29 U.S.C.
 22 216) is amended by adding at the end the following new
 23 subsection:

24 “(f)(1) Any person who violates the provisions of sec-
 25 tion 8 shall—

1 “(A) be subject to a civil penalty of \$5,000 for
2 a first offense, increased by an additional \$1,000 for
3 each subsequent offense, not to exceed \$10,000; and

4 “(B) be liable to each employee or prospective
5 employee who was the subject of the violation for
6 special damages not to exceed \$10,000 plus attor-
7 neys’ fees, and shall be subject to such injunctive re-
8 lief as may be appropriate.

9 “(2) An action to recover the liability described in
10 paragraph (1)(B) may be maintained against any em-
11 ployer (including a public agency) in any Federal or State
12 court of competent jurisdiction by any one or more em-
13 ployees or prospective employees for and on behalf of—

14 “(A) the employees or prospective employees;
15 and

16 “(B) other employees or prospective employees
17 similarly situated.”.

18 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
20 are authorized to be appropriated such sums as may be
21 necessary to carry out this Act.

22 (b) **PROHIBITION ON EARMARKS.**—None of the funds
23 appropriated pursuant to subsection (a) for purposes of
24 the grant program in section 5 of this Act may be used

1 for a congressional earmark as defined in clause 9(e) of
2 rule XXI of the Rules of the House of Representatives.

3 **SEC. 12. SMALL BUSINESS ASSISTANCE.**

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

7 (b) **TECHNICAL ASSISTANCE MATERIALS.**—The Sec-
8 retary of Labor and the Commissioner of the Equal Em-
9 ployment Opportunity Commission shall jointly develop
10 technical assistance material to assist small enterprises in
11 complying with the requirements of this Act and the
12 amendments made by this Act.

13 (c) **SMALL BUSINESSES.**—A small enterprise shall be
14 exempt from the provisions of this Act, and the amend-
15 ments made by this Act, to the same extent that such en-
16 terprise is exempt from the requirements of the Fair
17 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) pur-
18 suant to clauses (i) and (ii) of section 3(s)(1)(A) of such
19 Act (29 U.S.C. 203(s)(1)(A)).

20 **SEC. 13. RULE OF CONSTRUCTION.**

21 Nothing in this Act, or in any amendments made by
22 this Act, shall affect the obligation of employers and em-
23 ployees to fully comply with all applicable immigration
24 laws, including being subject to any penalties, fines, or
25 other sanctions.

1 **SEC. 14. SEVERABILITY.**

2 If any provision of this Act, an amendment made by
3 this Act, or the application of that provision or amend-
4 ment to particular persons or circumstances is held invalid
5 or found to be unconstitutional, the remainder of this Act,
6 the amendments made by this Act, or the application of
7 that provision to other persons or circumstances shall not
8 be affected.

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