

American Worker's Freedom and Labor Price Transparency Act

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AN ACT

To amend the Fair Labor Standards Act of 1938 to provide labor price transparency, resulting in more effective labor markets in the payment of wages.

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Worker's Freedom and Labor Price Transparency Act"

SEC. 2. FINDINGS.

Congress finds the following:

(1) Labor markets suffer from information asymmetry, this:

(A) burdens commerce and the free flow of goods in commerce;

(B) constitutes an unfair method of competition in commerce;

(C) tends to cause labor disputes, as evidenced by the tens of thousands of charges filed against employers between 2010 and 2016;

(D) interferes with the orderly and fair marketing of goods in commerce; and

(E) in some instances, may deprive workers of equal protection in violation of the 5th and 14th Amendments to the Constitution.

(2) (A) Artificial barriers to the elimination of information asymmetries in the payment of wages continue to exist decades after the enactment of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.)

(B) Elimination of such barriers would have positive effects, including—

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

(ii) ensuring equal protection pursuant to Congress' power to enforce the 5th and 14th Amendments to the Constitution.

(3) The Department of Labor and the Employment Transparency Commission carry out functions to help ensure that employees receive transparent wages.

(4) The Department of Labor is responsible for—

(A) collecting and making publicly available information about employee pay;

(B) ensuring that companies receiving Federal contracts comply with requirements of Executive Order 11246;

(C) helping workers who have been victims of retaliation for sharing wage information obtain a remedy

SEC. 3. ENFORCEMENT OF TRANSPARENT PAY REQUIREMENTS AND NON-RETALIATION

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

(1) in subsection (a)—

(A) in paragraph (3), by striking “employee has filed” and all that follows and inserting “employee—

“(A) has made a charge or filed any complaint or instituted or caused to be instituted any investigation, proceeding, hearing, or action under or related to this Act, including an investigation conducted by the employer, or has testified or is planning to testify or has assisted or participated in any manner in any such investigation, proceeding, hearing or action, or has served or is planning to serve on an industry committee; or

“(B) has inquired about, discussed, or disclosed the wages of the employee or another employee (such as by inquiring or discussing with the employer why the wages of the employee are set at a certain rate or salary);”;

(B) in paragraph (5), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(6) to require an employee to sign a contract or waiver that would prohibit the employee from disclosing information about the employee’s wages.”; and

(2) by adding at the end the following:

“(c) Subsection (a)(3)(B) shall not apply to instances in which an employee who has access to the wage information of other employees as a part of such employee’s essential job functions discloses the wages of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a complaint or charge or in furtherance of an investigation, proceeding, hearing, or action under section 6(d), including an investigation conducted by the employer. Nothing in this subsection shall be construed to limit the rights of an employee provided under any other provision of law.”.

(c) Enhanced Penalties.—Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended—

(1) by inserting after the first sentence the following: “Any employer who violates section 6(d) shall additionally be liable for such compensatory damages, or, where the employee demonstrates that the employer acted with malice or reckless indifference, punitive damages as may be appropriate, except that the United States shall not be liable for punitive damages.”;

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

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

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

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

(A) by striking “in such action” and inserting “in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection”; and

(B) by inserting before the period the following: “, including expert fees”.

(d) Action By Secretary.—Section 16(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is amended—

(1) in the first sentence—

(A) by inserting “or, in the case of a violation of section 6(d), additional compensatory or punitive damages, as described in subsection (b),” before “and the agreement”; and

(B) by inserting before the period the following: “, or such compensatory or punitive damages, as appropriate”;

(2) in the second sentence, by inserting before the period the following: “and, in the case of a violation of section 6(d), additional compensatory or punitive damages, as described in subsection (b)”;

(3) in the third sentence, by striking “the first sentence” and inserting “the first or second sentence”; and

(4) in the sixth sentence—

(A) by striking “commenced in the case” and inserting “commenced—

“(1) in the case”;

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

(C) by adding at the end the following:

“(2) in the case of a class action brought to enforce section 6(d), on the date on which the individual becomes a party plaintiff to the class action.”.

SEC. 4. RESEARCH, EDUCATION, AND OUTREACH.

(a) In General.—Not later than 18 months after the date of enactment of this Act, and periodically thereafter, the Secretary of Labor shall conduct studies and provide information to employers, labor organizations, and the general public, including—

(1) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the media, and the general public the findings resulting from studies and other materials;

(2) sponsoring and assisting State, local, and community informational and educational programs;

(3) providing information to employers, labor organizations, professional associations, and other interested persons

SEC. 5. COLLECTION OF PAY INFORMATION BY THE EMPLOYMENT TRANSPARENCY COMMISSION.

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

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

“(2) In carrying out paragraph (1), the Commission shall have as its primary consideration the most effective and efficient means for enhancing the enforcement of Federal laws prohibiting pay discrimination. For this purpose, the Commission shall consider factors including the imposition of burdens on employers, the frequency of required reports (including the size of employers required to prepare reports), appropriate protections for maintaining data confidentiality, and the most effective format to report such data.

“(3) (A) For each 12-month reporting period for an employer, the compensation data collected under paragraph (1) shall include, for each range of taxable compensation described in subparagraph (B), disaggregated by the categories described in subparagraph (E)—

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

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

“(B) Subject to adjustment under subparagraph (C), the taxable compensation ranges described in this subparagraph are as follows:

“(i) Not more than \$19,239.

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

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

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

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

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

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

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

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

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

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

“(xii) Not less than \$208,000.

“(C) The Commission may adjust the taxable compensation ranges under subparagraph (B)—

“(i) if the Commission determines that such adjustment is necessary to enhance enforcement of Federal laws prohibiting pay discrimination; or

“(ii) for inflation, in consultation with the Bureau of Labor Statistics.

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

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

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

“(E) The categories described in this subparagraph shall be determined by the Commission and shall include—

“(i) race;

“(ii) ethnic identity;

“(iii) sex; and

“(iv) job categories, including the job categories described in the instructions for the Equal Employment Opportunity Employer Information Report EEO–1, as in effect on the date of the enactment of this subsection.

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

“(i) to enhance—

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

“(II) the allocation of resources to investigate such charges; and

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

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

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

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

“(B) the Commission determines appropriate.”.

SEC. 6. PROHIBITIONS RELATING TO PROSPECTIVE EMPLOYEES’ SALARY AND BENEFIT HISTORY.

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

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

“(a) In General.—It shall be an unlawful practice for an employer to—

“(1) rely on the wage history of a prospective employee in considering the prospective employee for employment, including requiring that a prospective employee’s prior wages satisfy minimum or maximum criteria as a condition of being considered for employment;

“(2) rely on the wage history of a prospective employee in determining the wages for such prospective employee, except that an employer may rely on wage history if it is voluntarily provided by a prospective employee, after the employer makes an offer of employment with an offer of compensation to the prospective employee, to support a wage higher than the wage offered by the employer;

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

“(4) discharge or in any other manner retaliate against any employee or prospective employee because the employee or prospective employee—

“(A) opposed any act or practice made unlawful by this section; or

“(B) took an action for which discrimination is forbidden under section 15(a)(3).

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

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

“(f) (1) Any person who violates the provisions of section 8 shall—

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

“(B) be liable to each employee or prospective employee who was the subject of the violation for special damages not to exceed \$10,000 plus attorneys' fees, and shall be subject to such injunctive relief as may be appropriate.

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

“(A) the employees or prospective employees; and

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

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization Of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this Act.

(b) Prohibition On Earmarks.—None of the funds appropriated pursuant to subsection (a) for purposes of the grant program in section 5 of this Act may be used for a congressional earmark as defined in clause 9(e) of rule XXI of the Rules of the House of Representatives.

SEC. 8. SMALL BUSINESS ASSISTANCE.

(a) Small Businesses.—A small enterprise shall be exempt from the provisions of this Act, and the amendments made by this Act, to the same extent that such enterprise is exempt from the requirements of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) pursuant to clauses (i) and (ii) of section 3(s)(1)(A) of such Act (29 U.S.C. 203(s)(1)(A)).

(b) Technical Assistance Materials.—The Secretary of Labor and the Commissioner of the Employment Transparency Commission shall jointly develop technical assistance material to assist small enterprises in complying with the requirements of this Act and the amendments made by this Act.

SEC. 9. ENACTMENT.

(a) Enactment Date.—This Act is considered enacted when it is signed into law.

(b) Effective Date.—This Act and the amendments made by this Act shall take effect on the date that is 6 months after the date of enactment of this Act.

SEC. 10. RULE OF CONSTRUCTION.

Nothing in this Act, or in any amendments made by this Act, shall affect the obligation of employers and employees to fully comply with all applicable immigration laws, including being subject to any penalties, fines, or other sanctions.

SEC. 11. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of that provision or amendment to particular persons or circumstances is held invalid or found to be unconstitutional, the remainder of this Act, the amendments made by this Act, or the application of that provision to other persons or circumstances shall not be affected.