



IN THE CONGRESS OF THE UNITED STATES

MAY 13th, 2020

Rep. KAMALA D. HARRIS (for herself) introduced the following bill

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This act may be cited as the “Equal Pay for Equal Work Act.”

SECTION 2. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS

(a) BONA-FIDE FACTOR DEFENSE AND MODIFICATION OF SAME

ESTABLISHMENT REQUIREMENT.—Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended—

(1) by striking “No employer having” and inserting “(A) No employer having”;

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

(3) by inserting at the end the following:

“(B) The bona fide factor defense described in subparagraph (A)(iv) shall apply only if the employer demonstrates that such factor (i) is not based upon or derived from a sex-based differential in compensation; (ii) is job related with respect to the position in question; and (iii) is consistent with business necessity. Such defense shall not apply where the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice.

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

(b) NON-RETALIATION PROVISION.—Section 15 of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(1) in subsection (a)(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;

“(B) has inquired about, discussed, or disclosed the wages of the employee or another employee.”; 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 “either of 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 last 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.”.

SECTION 3. TRAINING.

The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, subject to the availability of funds appropriated under section 10, shall provide training to Commission employees and affected individuals and entities on matters involving discrimination in the payment of wages.

SECTION 4. NEGOTIATION SKILLS TRAINING FOR GIRLS AND WOMEN.

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Labor, after consultation with the Secretary of Education, is authorized to establish and carry out a grant program.

(2) GRANTS.—In carrying out the program, the Secretary of Labor may make grants on a competitive basis to eligible entities, to carry out negotiation skills training programs for girls and women.

(3) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this subsection, an entity shall be a public agency, such as a State, a local government in a metropolitan statistical area (as defined by the Office of Management and Budget), a State educational agency, or a local educational agency, a private nonprofit organization, or a community based organization.

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

(5) USE OF FUNDS.—An entity that receives a grant under this subsection shall use the funds made available through the grant to carry out an effective negotiation skills training program that empowers girls and women. The training provided through the program shall help girls and women strengthen their negotiation skills to allow the girls and women to obtain higher salaries and rates of compensation that are equal to those paid to similarly situated male employees.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Labor and the Secretary of Education shall prepare and submit to

Congress a report describing the activities conducted under this section and evaluating the effectiveness of such activities in achieving the purposes of this Act.

SECTION 5. 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 any penalties, fines, or other sanctions.

SECTION 6. EFFECTIVE DATE AND ENACTMENT

(a) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the date of the enactment of this Act.