

107TH CONGRESS
1ST SESSION

H. R. 781

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

FEBRUARY 28, 2001

Ms. DELAURO (for herself, Mr. ABERCROMBIE, Mr. ALLEN, Mr. ANDREWS, Mr. BACA, Mr. BALDACCI, Ms. BALDWIN, Mr. BARCIA, Mr. BARRETT, Mr. BECERRA, Ms. BERKLEY, Mr. BERMAN, Mr. BLAGOJEVICH, Mr. BLUMENAUER, Mr. BONIOR, Mr. BORSKI, Mr. BOSWELL, Ms. BROWN of Florida, Mr. BROWN of Ohio, Mrs. CAPPS, Mr. CAPUANO, Ms. CARSON of Indiana, Mrs. CHRISTENSEN, Mrs. CLAYTON, Mr. CONYERS, Mr. COSTELLO, Mr. COYNE, Mr. CROWLEY, Mr. CUMMINGS, Mr. DEFazio, Mr. DELAHUNT, Mr. DEUTSCH, Mr. DICKS, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mr. FARR of California, Mr. FILNER, Mr. FRANK, Mr. FROST, Mr. GEPHARDT, Mr. GREEN of Texas, Mr. GUTIERREZ, Mr. HALL of Texas, Mr. HINCHEY, Mr. HOLDEN, Mr. HOLT, Mr. HOYER, Mr. INSLEE, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. JONES of Ohio, Ms. KAPTUR, Mr. KENNEDY of Rhode Island, Ms. KILPATRICK, Mr. KLECZKA, Mr. KUCINICH, Mr. LANTOS, Mr. LARSON of Connecticut, Mr. LEVIN, Mrs. LOWEY, Mrs. MALONEY of New York, Mr. MALONEY of Connecticut, Mr. MATSUI, Ms. MCCARTHY of Missouri, Mrs. MCCARTHY of New York, Ms. MCCOLLUM, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCNULTY, Mr. MEEHAN, Mrs. MEEK of Florida, Ms. MILLENDER-MCDONALD, Mr. GEORGE MILLER of California, Mrs. MINK of Hawaii, Mr. MOORE, Mr. MORAN of Virginia, Ms. NORTON, Mr. OBEY, Mr. PASCRELL, Mr. PASTOR, Mr. PAYNE, Ms. PELOSI, Mr. POMEROY, Mr. PRICE of North Carolina, Mr. REYES, Ms. RIVERS, Ms. ROYBAL-ALLARD, Mr. RODRIGUEZ, Mr. RUSH, Ms. SANCHEZ, Mr. SANDERS, Mr. SANDLIN, Ms. SCHAKOWSKY, Mr. SERRANO, Mr. SHERMAN, Mr. SHOWS, Ms. SLAUGHTER, Mr. STRICKLAND, Mr. STUPAK, Mrs. TAUSCHER, Mr. TIERNEY, Mr. TOWNS, Mr. UDALL of New Mexico, Ms. WATERS, Mr. WATT of North Carolina, Mr. WAXMAN, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Education and the Workforce

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 AND REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Paycheck Fairness Act”.

6 (b) REFERENCE.—Whenever in this Act (other than
7 in section 8) an amendment or repeal is expressed in terms
8 of an amendment to, or repeal of, a section or other provi-
9 sion, the reference shall be considered to be made to a
10 section or other provision of the Fair Labor Standards Act
11 of 1938.

12 **SEC. 2. FINDINGS.**

13 The Congress finds the following:

14 (1) Women have entered the workforce in
15 record numbers.

16 (2) Even in the 21st century, women earn sig-
17 nificantly lower pay than men for work on jobs that
18 require equal skill, effort, and responsibility and that
19 are performed under similar working conditions.

20 These pay disparities exist in both the private and
21 governmental sectors. In many instances, the pay

1 disparities can only be due to continued intentional
2 discrimination or the lingering effects of past dis-
3 crimination.

4 (3) The existence of such pay disparities—

5 (A) depresses the wages of working fami-
6 lies who rely on the wages of all members of the
7 family to make ends meet;

8 (B) prevents the optimum utilization of
9 available labor resources;

10 (C) has been spread and perpetuated,
11 through commerce and the channels and instru-
12 mentalities of commerce, among the workers of
13 the several States;

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

16 (E) constitutes an unfair method of com-
17 petition in commerce;

18 (F) leads to labor disputes burdening and
19 obstructing commerce and the free flow of
20 goods in commerce;

21 (G) interferes with the orderly and fair
22 marketing of goods in commerce; and

23 (H) in many instances, may deprive work-
24 ers of equal protection on the basis of sex in

1 violation of the 5th and 14th amendments to
2 the United States Constitution.

3 (4)(A) Artificial barriers to the elimination of
4 discrimination in the payment of wages on the basis
5 of sex continue to exist even decades after the enact-
6 ment of the Fair Labor Standards Act of 1938 (29
7 U.S.C. 201 et seq.) and the Civil Rights Act of 1964
8 (42 U.S.C. 2000a et seq.).

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

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

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

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

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

23 (v) in the private sector, ensuring equal
24 protection pursuant to Congress' power to en-

1 force the 5th and 14th amendments to the
2 United States Constitution.

3 (5) With increased information about the provi-
4 sions added by the Equal Pay Act of 1963 (29
5 U.S.C. 206) and generalized wage data, along with
6 more effective remedies, women will be better able to
7 recognize and enforce their rights to equal pay for
8 work on jobs that require equal skill, effort, and re-
9 sponsibility and that are performed under similar
10 working conditions.

11 (6) Certain employers have already made great
12 strides in eradicating unfair pay disparities in the
13 workplace and their achievements should be recog-
14 nized.

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

17 (a) REQUIRED DEMONSTRATION FOR AFFIRMATIVE
18 DEFENSE.—Section 6(d)(1) (29 U.S.C. 206(d)(1)) is
19 amended—

20 (1) by inserting “(A)” after “(d)(1)”; and

21 (2) by striking “(iv) a differential” and all that
22 follows through the period and inserting the fol-
23 lowing: “(iv) a differential based on a bona fide fac-
24 tor other than sex, such as education, training, or

1 experience, except that this clause shall apply only
2 if—

3 “(I) the employer demonstrates that—

4 “(aa) such factor—

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

7 “(BB) furthers a legitimate business
8 purpose, except that this item shall not
9 apply where the employee demonstrates
10 that an alternative employment practice
11 exists that would serve the same business
12 purpose without producing such differen-
13 tial and that the employer has refused to
14 adopt such alternative practice; and

15 “(bb) such factor was actually applied and
16 used reasonably in light of the asserted jus-
17 tification; and

18 “(II) if the employer makes the demonstration
19 described in subclause (I), the employee fails to dem-
20 onstrate that the differential produced by the reli-
21 ance of the employer on the factor described in such
22 subclause is the result of discrimination on the basis
23 of sex by the employer.

1 “(B) An employer that is not otherwise in compliance
2 with this paragraph may not reduce the wages of any em-
3 ployee in order to achieve such compliance.”.

4 (b) APPLICATION OF PROVISIONS.—Section 6(d) (29
5 U.S.C. 206(d)) is amended by adding at the end the fol-
6 lowing:

7 “(5) The provisions of this subsection shall apply to
8 applicants for employment if such applicants, upon em-
9 ployment by the employer applied to, would be subject to
10 any other subsection of this section.”.

11 (c) ELIMINATION OF ESTABLISHMENT REQUIRE-
12 MENT.—Section 6(d)(1) (29 U.S.C. 206(d)(1)) is
13 amended—

14 (1) by striking “, within any establishment in
15 which such employees are employed,”; and

16 (2) by striking “such establishment” each place
17 it appears.

18 (d) NONRETALIATION PROVISION.—Section 15(a)(3)
19 (29 U.S.C. 215(a)(3)) is amended—

20 (1) by striking “employee” the first place it ap-
21 pears and inserting “employee (or applicant for em-
22 ployment in the case of an applicant described in
23 section 6(d)(5))”;

24 (2) by inserting “(or applicant)” after “em-
25 ployee” the second place it appears;

1 (3) by striking “or has” each place it appears
2 and inserting “has”; and

3 (4) by inserting before the semicolon the fol-
4 lowing: “, has inquired about, discussed, or other-
5 wise disclosed the wages of the employee or another
6 employee, or because the employee (or applicant) has
7 made a charge, testified, assisted, or participated in
8 any manner in an investigation, proceeding, hearing,
9 or action under section 6(d)”.

10 (e) ENHANCED PENALTIES.—Section 16(b) (29
11 U.S.C. 216(b)) is amended—

12 (1) by inserting after the first sentence the fol-
13 lowing: “Any employer who violates section 6(d)
14 shall additionally be liable for such compensatory or
15 punitive damages as may be appropriate, except that
16 the United States shall not be liable for punitive
17 damages.”;

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

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

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

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

8 (A) by striking “in such action” and in-
9 serting “in any action brought to recover the li-
10 ability prescribed in any of the preceding sen-
11 tences of this subsection”; and

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

14 (f) ACTION BY SECRETARY.—Section 16(c) (29
15 U.S.C. 216(c)) is amended—

16 (1) in the first sentence—

17 (A) by inserting “or, in the case of a viola-
18 tion of section 6(d), additional compensatory or
19 punitive damages,” before “and the agree-
20 ment”; and

21 (B) by inserting before the period the fol-
22 lowing: “, or such compensatory or punitive
23 damages, as appropriate”;

24 (2) in the second sentence, by inserting before
25 the period the following: “and, in the case of a viola-

1 tion of section 6(d), additional compensatory or pu-
2 nitive damages”;

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

6 (4) in the last sentence—

7 (A) by striking “commenced in the case”
8 and inserting “commenced—
9 “(1) in the case”;

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

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

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

16 **SEC. 4. TRAINING.**

17 The Equal Employment Opportunity Commission
18 and the Office of Federal Contract Compliance Programs,
19 subject to the availability of funds appropriated under sec-
20 tion 9(b), shall provide training to Commission employees
21 and affected individuals and entities on matters involving
22 discrimination in the payment of wages.

23 **SEC. 5. RESEARCH, EDUCATION, AND OUTREACH.**

24 The Secretary of Labor shall conduct studies and
25 provide information to employers, labor organizations, and

1 the general public concerning the means available to elimi-
2 nate pay disparities between men and women, including—

3 (1) conducting and promoting research to de-
4 velop the means to correct expeditiously the condi-
5 tions leading to the pay disparities;

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 and commu-
13 nity 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;

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; and

22 (6) convening a national summit to discuss and
23 consider approaches for rectifying the pay dispari-
24 ties.

1 **SEC. 6. TECHNICAL ASSISTANCE AND EMPLOYER RECOGNITION PROGRAM.**
2

3 (a) GUIDELINES.—

4 (1) IN GENERAL.—The Secretary of Labor shall
5 develop guidelines to enable employers to evaluate
6 job categories based on objective criteria such as
7 educational requirements, skill requirements, inde-
8 pendence, working conditions, and responsibility, in-
9 cluding decisionmaking responsibility and de facto
10 supervisory responsibility.

11 (2) USE.—The guidelines developed under
12 paragraph (1) shall be designed to enable employers
13 voluntarily to compare wages paid for different jobs
14 to determine if the pay scales involved adequately
15 and fairly reflect the educational requirements, skill
16 requirements, independence, working conditions, and
17 responsibility for each such job, with the goal of
18 eliminating unfair pay disparities between occupa-
19 tions traditionally dominated by men or women.

20 (3) PUBLICATION.—The guidelines developed
21 under paragraph (1) shall be published in the Fed-
22 eral Register not later than 180 days after the date
23 of enactment of this Act.

24 (b) EMPLOYER RECOGNITION.—

25 (1) PURPOSE.—It is the purpose of this sub-
26 section to emphasize the importance, encourage the

1 improvement, and recognize the excellence of em-
2 ployer efforts to pay wages to women that reflect the
3 real value of the contributions of such women to the
4 workplace.

5 (2) IN GENERAL.—To carry out the purpose of
6 this subsection, the Secretary of Labor shall estab-
7 lish a program under which the Secretary shall pro-
8 vide for the recognition of employers who, pursuant
9 to a voluntary job evaluation conducted by the em-
10 ployer, adjust their wage scales using the guidelines
11 developed under subsection (a) to ensure that women
12 are paid fairly in comparison to men, but such ad-
13 justments shall not include the lowering of wages
14 paid to men.

15 (3) TECHNICAL ASSISTANCE.—The Secretary of
16 Labor may provide technical assistance to assist an
17 employer in carrying out an evaluation under para-
18 graph (2).

19 (c) RULEMAKING.—The Secretary of Labor may
20 make rules to carry out this section.

21 **SEC. 7. ESTABLISHMENT OF NATIONAL AWARD FOR PAY**
22 **EQUITY IN THE WORKPLACE.**

23 (a) IN GENERAL.—There is established the Alexis
24 Herman National Award for Pay Equity in the Workplace,
25 which shall be evidenced by a medal bearing the inscrip-

1 tion “Alexis Herman National Award for Pay Equity in
2 the Workplace”. The medal shall be of such design and
3 materials and bear such additional inscriptions as the Sec-
4 retary of Labor may prescribe.

5 (b) CRITERIA FOR QUALIFICATION.—To qualify to
6 receive an award under this section a business shall—

7 (1) submit a written application to the Sec-
8 retary of Labor, at such time, in such manner, and
9 containing such information as the Secretary may
10 require, including at a minimum information that
11 demonstrates that the business has made a substan-
12 tial effort to eliminate pay disparities between men
13 and women, and deserves special recognition as a
14 consequence; and

15 (2) meet such additional requirements and
16 specifications as the Secretary of Labor determines
17 to be appropriate.

18 (c) MAKING AND PRESENTATION OF AWARD.—

19 (1) AWARD.—After receiving recommendations
20 from the Secretary of Labor, the President or the
21 designated representative of the President shall an-
22 nually present the award described in subsection (a)
23 to businesses that meet the qualifications described
24 in subsection (b).

1 (2) PRESENTATION.—The President or the des-
2 ignated representative of the President shall present
3 the award under this section with such ceremonies
4 as the President or the designated representative of
5 the President determines to be appropriate.

6 (d) BUSINESS.—In this section, the term “business”
7 includes—

8 (1)(A) a corporation, including a nonprofit cor-
9 poration;

10 (B) a partnership;

11 (C) a professional association;

12 (D) a labor organization; and

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

15 (2) an entity carrying out an education referral
16 program, a training program, such as an apprentice-
17 ship or management training program, or a similar
18 program; and

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

1 **SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL**
2 **EMPLOYMENT OPPORTUNITY COMMISSION.**

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

6 “(f)(1) Not later than 18 months after the date of
7 enactment of this subsection, the Commission shall—

8 “(A) complete a survey of the data that is cur-
9 rently available to the Federal Government relating
10 to employee pay information for use in the enforce-
11 ment of Federal laws prohibiting pay discrimination
12 and, in consultation with other relevant Federal
13 agencies, identify additional data collections that will
14 enhance the enforcement of such laws; and

15 “(B) based on the results of the survey and
16 consultations under subparagraph (A), make rules to
17 provide for the collection of pay information data
18 from employers as described by the sex, race, and
19 national origin of employees.

20 “(2) In implementing paragraph (1), the Commission
21 shall have as its primary consideration the most effective
22 and efficient means for enhancing the enforcement of Fed-
23 eral laws prohibiting pay discrimination, and shall also
24 consider other factors, including the imposition of burdens
25 on employers, the frequency of required reports (including
26 which employers should be required to prepare reports),

1 appropriate protections for maintaining data confiden-
2 tiality, and the most effective format for the data collec-
3 tions reports.”.

4 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated such sums
6 as may be necessary to carry out this Act.

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