

108TH CONGRESS  
1ST SESSION

# H. R. 1688

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.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2003

Ms. DELAURO (for herself, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Mrs. CAPPS, Mr. DICKS, Mr. DOGGETT, Mr. FARR, Mr. FROST, Mr. GEPHARDT, Mr. HOEFFEL, Mr. FRANK of Massachusetts, Mr. KENNEDY of Rhode Island, Mr. KUCINICH, Mr. LANGEVIN, Mrs. MALONEY, Mr. MEEHAN, Mr. MORAN of Virginia, Mr. RODRIGUEZ, Mr. SANDERS, Ms. SOLIS, Mr. VAN HOLLEN, Mr. KILDEE, Mr. SERRANO, Mr. REYES, Mr. KLECZKA, Mr. MATSUI, Ms. CORRINE BROWN of Florida, Mr. OLVER, Ms. SLAUGHTER, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. LOWEY, Mrs. MCCARTHY of New York, Ms. CARSON of Indiana, Ms. MCCOLLUM, Mr. MOORE, Mr. INSLEE, Ms. BALDWIN, Mr. ABERCROMBIE, Mr. CUMMINGS, Mr. SCOTT of Georgia, Mr. WEINER, Mr. SABO, and Mr. STARK) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## 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,*

1 **SECTION 1. SHORT TITLE AND REFERENCE.**

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

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

10 **SEC. 2. FINDINGS.**

11 The Congress finds the following:

12 (1) Women have entered the workforce in  
13 record numbers.

14 (2) Even in the 21st century, women earn sig-  
15 nificantly lower pay than men for work on jobs that  
16 require equal skill, effort, and responsibility and that  
17 are performed under similar working conditions.  
18 These pay disparities exist in both the private and  
19 governmental sectors. In many instances, the pay  
20 disparities can only be due to continued intentional  
21 discrimination or the lingering effects of past dis-  
22 crimination.

23 (3) The existence of such pay disparities—

24 (A) depresses the wages of working fami-  
25 lies who rely on the wages of all members of the  
26 family to make ends meet;

1 (B) prevents the optimum utilization of  
2 available labor resources;

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

7 (D) burdens commerce and the free flow of  
8 goods in commerce;

9 (E) constitutes an unfair method of com-  
10 petition in commerce;

11 (F) leads to labor disputes burdening and  
12 obstructing commerce and the free flow of  
13 goods in commerce;

14 (G) interferes with the orderly and fair  
15 marketing of goods in commerce; and

16 (H) in many instances, may deprive work-  
17 ers of equal protection on the basis of sex in  
18 violation of the 5th and 14th amendments to  
19 the United States Constitution.

20 (4)(A) Artificial barriers to the elimination of  
21 discrimination in the payment of wages on the basis  
22 of sex continue to exist even decades after the enact-  
23 ment of the Fair Labor Standards Act of 1938 (29  
24 U.S.C. 201 et seq.) and the Civil Rights Act of 1964  
25 (42 U.S.C. 2000a et seq.).

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

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

5 (ii) substantially reducing the number of  
6 working women earning unfairly low wages,  
7 thereby reducing the dependence on public as-  
8 sistance;

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

11 (iv) remedying the effects of past discrimi-  
12 nation on the basis of sex and ensuring that in  
13 the future workers are afforded equal protection  
14 on the basis of sex; and

15 (v) in the private sector, ensuring equal  
16 protection pursuant to Congress' power to en-  
17 force the 5th and 14th amendments to the  
18 United States Constitution.

19 (5) With increased information about the provi-  
20 sions added by the Equal Pay Act of 1963 (29  
21 U.S.C. 206) and generalized wage data, along with  
22 more effective remedies, women will be better able to  
23 recognize and enforce their rights to equal pay for  
24 work on jobs that require equal skill, effort, and re-

1       sponsibility and that are performed under similar  
2       working conditions.

3               (6) Certain employers have already made great  
4       strides in eradicating unfair pay disparities in the  
5       workplace and their achievements should be recog-  
6       nized.

7       **SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**  
8               **QUIREMENTS.**

9               (a) **REQUIRED DEMONSTRATION FOR AFFIRMATIVE**  
10      **DEFENSE.**—Section 6(d)(1) (29 U.S.C. 206(d)(1)) is  
11      amended—

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

13              (2) by striking “(iv) a differential” and all that  
14      follows through the period and inserting the fol-  
15      lowing: “(iv) a differential based on a bona fide fac-  
16      tor other than sex, such as education, training, or  
17      experience, except that this clause shall apply only  
18      if—

19              “(I) the employer demonstrates that—

20              “(aa) such factor—

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

23              “(BB) furthers a legitimate business  
24              purpose, except that this item shall not  
25              apply where the employee demonstrates

1           that an alternative employment practice  
2           exists that would serve the same business  
3           purpose without producing such differen-  
4           tial and that the employer has refused to  
5           adopt such alternative practice; and

6           “(bb) such factor was actually applied and  
7           used reasonably in light of the asserted jus-  
8           tification; and

9           “(II) if the employer makes the demonstration  
10          described in subclause (I), the employee fails to dem-  
11          onstrate that the differential produced by the reli-  
12          ance of the employer on the factor described in such  
13          subclause is the result of discrimination on the basis  
14          of sex by the employer.

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

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

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

1 (c) ELIMINATION OF ESTABLISHMENT REQUIRE-  
2 MENT.—Section 6(d)(1) (29 U.S.C. 206(d)(1)) is amend-  
3 ed—

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

6 (2) by striking “such establishment” each place  
7 it appears.

8 (d) NONRETALIATION PROVISION.—Section 15(a)(3)  
9 (29 U.S.C. 215(a)(3)) is amended—

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

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

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

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

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

3 (1) by inserting after the first sentence the fol-  
4 lowing: “Any employer who violates section 6(d)  
5 shall additionally be liable for such compensatory or  
6 punitive damages as may be appropriate, except that  
7 the United States shall not be liable for punitive  
8 damages.”;

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

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

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

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

24 (A) by striking “in such action” and in-  
25 serting “in any action brought to recover the li-

1 ability prescribed in any of the preceding sen-  
2 tences of this subsection”; and

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

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

7 (1) in the first sentence—

8 (A) by inserting “or, in the case of a viola-  
9 tion of section 6(d), additional compensatory or  
10 punitive damages,” before “and the agree-  
11 ment”; and

12 (B) by inserting before the period the fol-  
13 lowing: “, or such compensatory or punitive  
14 damages, as appropriate”;

15 (2) in the second sentence, by inserting before  
16 the period the following: “and, in the case of a viola-  
17 tion of section 6(d), additional compensatory or pu-  
18 nitive damages”;

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

22 (4) in the last sentence—

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

25 “(1) in the case”;

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

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

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

7 **SEC. 4. TRAINING.**

8 The Equal Employment Opportunity Commission  
9 and the Office of Federal Contract Compliance Programs,  
10 subject to the availability of funds appropriated under sec-  
11 tion 9(b), shall provide training to Commission employees  
12 and affected individuals and entities on matters involving  
13 discrimination in the payment of wages.

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

15 The Secretary of Labor shall conduct studies and  
16 provide information to employers, labor organizations, and  
17 the general public concerning the means available to elimi-  
18 nate pay disparities between men and women, including—

19 (1) conducting and promoting research to de-  
20 velop the means to correct expeditiously the condi-  
21 tions leading to the pay disparities;

22 (2) publishing and otherwise making available  
23 to employers, labor organizations, professional asso-  
24 ciations, educational institutions, the media, and the  
25 general public the findings resulting from studies

1 and other materials relating to eliminating the pay  
2 disparities;

3 (3) sponsoring and assisting State and commu-  
4 nity informational and educational programs;

5 (4) providing information to employers, labor  
6 organizations, professional associations, and other  
7 interested persons on the means of eliminating the  
8 pay disparities;

9 (5) recognizing and promoting the achievements  
10 of employers, labor organizations, and professional  
11 associations that have worked to eliminate the pay  
12 disparities; and

13 (6) convening a national summit to discuss and  
14 consider approaches for rectifying the pay dispari-  
15 ties.

16 **SEC. 6. TECHNICAL ASSISTANCE AND EMPLOYER RECOGNI-**  
17 **TION PROGRAM.**

18 (a) GUIDELINES.—

19 (1) IN GENERAL.—The Secretary of Labor shall  
20 develop guidelines to enable employers to evaluate  
21 job categories based on objective criteria such as  
22 educational requirements, skill requirements, inde-  
23 pendence, working conditions, and responsibility, in-  
24 cluding decisionmaking responsibility and de facto  
25 supervisory responsibility.

1           (2) USE.—The guidelines developed under  
2 paragraph (1) shall be designed to enable employers  
3 voluntarily to compare wages paid for different jobs  
4 to determine if the pay scales involved adequately  
5 and fairly reflect the educational requirements, skill  
6 requirements, independence, working conditions, and  
7 responsibility for each such job, with the goal of  
8 eliminating unfair pay disparities between occupa-  
9 tions traditionally dominated by men or women.

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

14           (b) EMPLOYER RECOGNITION.—

15           (1) PURPOSE.—It is the purpose of this sub-  
16 section to emphasize the importance, encourage the  
17 improvement, and recognize the excellence of em-  
18 ployer efforts to pay wages to women that reflect the  
19 real value of the contributions of such women to the  
20 workplace.

21           (2) IN GENERAL.—To carry out the purpose of  
22 this subsection, the Secretary of Labor shall estab-  
23 lish a program under which the Secretary shall pro-  
24 vide for the recognition of employers who, pursuant  
25 to a voluntary job evaluation conducted by the em-

1        ployer, adjust their wage scales using the guidelines  
2        developed under subsection (a) to ensure that women  
3        are paid fairly in comparison to men, but such ad-  
4        justments shall not include the lowering of wages  
5        paid to men.

6            (3) TECHNICAL ASSISTANCE.—The Secretary of  
7        Labor may provide technical assistance to assist an  
8        employer in carrying out an evaluation under para-  
9        graph (2).

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

12        **SEC. 7. ESTABLISHMENT OF NATIONAL AWARD FOR PAY**  
13            **EQUITY IN THE WORKPLACE.**

14        (a) IN GENERAL.—There is established the National  
15        Award for Pay Equity in the Workplace, which shall be  
16        evidenced by a medal bearing the inscription “National  
17        Award for Pay Equity in the Workplace”. The medal shall  
18        be of such design and materials and bear such additional  
19        inscriptions as the Secretary of Labor may prescribe.

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

22            (1) submit a written application to the Sec-  
23        retary of Labor, at such time, in such manner, and  
24        containing such information as the Secretary may  
25        require, including at a minimum information that

1 demonstrates that the business has made a substan-  
2 tial effort to eliminate pay disparities between men  
3 and women, and deserves special recognition as a  
4 consequence; and

5 (2) meet such additional requirements and  
6 specifications as the Secretary of Labor determines  
7 to be appropriate.

8 (c) MAKING AND PRESENTATION OF AWARD.—

9 (1) AWARD.—After receiving recommendations  
10 from the Secretary of Labor, the President or the  
11 designated representative of the President shall an-  
12 nually present the award described in subsection (a)  
13 to businesses that meet the qualifications described  
14 in subsection (b).

15 (2) PRESENTATION.—The President or the des-  
16 igned representative of the President shall present  
17 the award under this section with such ceremonies  
18 as the President or the designated representative of  
19 the President determines to be appropriate.

20 (d) BUSINESS.—In this section, the term “business”  
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—

18 “(A) complete a survey of the data that is cur-  
19 rently available to the Federal Government relating  
20 to employee pay information for use in the enforce-  
21 ment of Federal laws prohibiting pay discrimination  
22 and, in consultation with other relevant Federal  
23 agencies, identify additional data collections that will  
24 enhance the enforcement of such laws; and

1           “(B) based on the results of the survey and  
2           consultations under subparagraph (A), make rules to  
3           provide for the collection of pay information data  
4           from employers as described by the sex, race, and  
5           national origin of employees.

6           “(2) In implementing paragraph (1), the Commission  
7           shall have as its primary consideration the most effective  
8           and efficient means for enhancing the enforcement of Fed-  
9           eral laws prohibiting pay discrimination, and shall also  
10          consider other factors, including the imposition of burdens  
11          on employers, the frequency of required reports (including  
12          which employers should be required to prepare reports),  
13          appropriate protections for maintaining data confiden-  
14          tiality, and the most effective format for the data collec-  
15          tions reports.”.

16       **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

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