

116TH CONGRESS
1ST SESSION

H. R. 1935

To amend the Fair Labor Standards Act of 1938 to enhance provisions related to pay discrimination, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2019

Ms. STEFANIK (for herself, Mr. HURD of Texas, Mr. CONAWAY, Mr. STIVERS, Ms. GRANGER, Mr. UPTON, Mrs. BROOKS of Indiana, Mr. MARSHALL, Mr. DIAZ-BALART, Mr. GIANFORTE, Mr. HUIZENGA, Mr. KATKO, Mr. COLE, Mrs. RODGERS of Washington, Mr. TURNER, Mr. BUCSHON, Mr. MCHENRY, Mrs. WALORSKI, Mr. HAGEDORN, Mr. WALDEN, Mr. SMUCKER, Mr. THOMPSON of Pennsylvania, Mr. STEIL, Mr. FLORES, Mr. FORTENBERRY, Mr. REED, Mr. WRIGHT, Mr. COOK, Mr. HUDSON, Mr. GONZALEZ of Ohio, Mrs. WAGNER, Mr. BURGESS, Mr. KING of New York, Mr. COLLINS of New York, Mr. STAUBER, Ms. HERRERA BEUTLER, Mr. BALDERSON, Mr. MCKINLEY, Mr. ZELDIN, Mr. BOST, Mr. FERGUSON, Mr. JOYCE of Ohio, Mr. TIMMONS, Mr. DAVID P. ROE of Tennessee, Mr. CHABOT, Mr. LATTA, Mr. BYRNE, Mr. KINZINGER, and Mr. LAHOOD) 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 enhance provisions related to pay discrimination, 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.**

2 This Act may be referred to as the “Wage Equity
3 Act of 2019”.

4 **SEC. 2. FINDINGS.**

5 (1) In 1963, Congress passed on a bipartisan
6 basis the Equal Pay Act of 1963 to prohibit dis-
7 crimination on account of sex in the payment of
8 wages for equal work performed by employees for
9 employers engaged in commerce or in the production
10 of goods for commerce.

11 (2) Following the passage of such Act, in 1964,
12 Congress passed on a bipartisan basis the Civil
13 Rights Act of 1964. Since the passage of both the
14 Equal Pay Act of 1963 and the Civil Rights Act of
15 1964, women have made significant strides, both in
16 the workforce and in their educational pursuits.

17 (3) Currently, there are nearly 75,000,000
18 women in the workforce, the most in American his-
19 tory. Of the 2,800,000 jobs created in 2018, 58 per-
20 cent went to women. This follows a trend that has
21 been rising for some time. Women are graduating
22 from college at a higher rate than their male counter-
23 parts, making up over 58 percent of all college de-
24 grees conferred in 2017. Additionally, according to a
25 recent survey of working women, 49 percent of em-
26 ployed women are their family’s primary bread-

1 winner. Women hold the majority of positions in the
 2 five fastest growing fields.

3 (4) Despite these advances there is still concern
 4 among the American public that gender-based pay
 5 discrimination has not been eliminated.

6 **SEC. 3. FLEXIBLE WORK ARRANGEMENT PLAN.**

7 Section 6(d) of the Fair Labor Standards Act of
 8 1938 (29 U.S.C. 206(d)) is amended—

9 (1) in paragraph (1)—

10 (A) by striking “or” after “a system which
 11 measures earnings by quantity or quality or
 12 production”;

13 (B) inserting “; or (v) a flexible work ar-
 14 rangement plan” after “any other factor other
 15 than sex”; and

16 (C) by inserting “job-related” before “fac-
 17 tor other than sex”; and

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

19 “(5) In this subsection, the term ‘flexible work
 20 arrangement plan’ means a plan offered by an em-
 21 ployer that an employee may opt into in which the
 22 employee agrees to certain scheduling benefits, in-
 23 cluding—

24 “(A) flexible scheduling.

25 “(B) a telework program; or

1 “(C) a compressed work schedule program
2 that allows the employee to work the equivalent
3 of full-time employment over a fewer number of
4 days by increasing the number of daily hours
5 worked.”.

6 **SEC. 4. PAY ANALYSIS.**

7 Section 16 of the Fair Labor Standards Act of 1938
8 (29 U.S.C. 216) is amended by adding at the end the fol-
9 lowing:

10 “(f)(1) If an employer conducts a pay analysis audit
11 and such audit reveals unlawful differentials in pay be-
12 tween equal jobs and such employer takes reasonable steps
13 to address such differentials consistent with federal laws
14 prohibiting pay discrimination, such employer shall not be
15 liable for liquidated damages in an action brought against
16 the employer for a violation of section 6(d) if such audit
17 is conducted—

18 “(A) in good faith to investigate such dif-
19 ferentials; and

20 “(B) not earlier than the date that is 3
21 years before the date on which the action is
22 brought and not later than the date that is 1
23 day before the action is brought.

24 “(2) An audit under this section and remedial
25 action taken in response to the findings of such

1 audit may not be discoverable or admissible for any
2 purpose in any claim against the employer.

3 “(3) An employer who has not completed an
4 audit under this subsection shall not be subject to a
5 negative or adverse inference as a result of not hav-
6 ing completed such audit.”.

7 **SEC. 5. WAGE, SALARY, AND BENEFIT HISTORY; DISCUS-**
8 **SION OF WAGES.**

9 (a) IN GENERAL.—The Fair Labor Standards Act of
10 1938 (29 U.S.C. 201 et seq.) is amended by inserting
11 after section 7 the following new section:

12 **“SEC. 8. PROVISIONS RELATING TO WAGE, SALARY, AND**
13 **BENEFIT HISTORY AND DISCUSSION OF**
14 **WAGES.**

15 “(a) REQUIREMENTS AND PROHIBITIONS RELATING
16 TO WAGE, SALARY, AND BENEFIT HISTORY.—It shall be
17 an unlawful practice for an employer to—

18 “(1) rely on the wage history of a prospective
19 employee in considering the prospective employee for
20 employment, including requiring that a prospective
21 employee’s prior wages satisfy minimum or max-
22 imum criteria as a condition of being considered for
23 employment, except that an employer may rely on
24 wage history if it is voluntarily provided by a pro-
25 spective employee;

1 “(2) rely on the wage history of a prospective
2 employee in determining the wages for such prospec-
3 tive employee, except that an employer may rely on
4 wage history if it is voluntarily provided by a pro-
5 spective employee;

6 “(3) require a prospective employee to disclose
7 the wage history of such prospective employee; or

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

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

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

15 “(b) PROHIBITIONS RELATING TO DISCUSSION OF
16 WAGES.—Subject to subsection (c), it shall be an unlawful
17 practice for an employer to—

18 “(1) prohibit an employee from inquiring about,
19 discussing, or disclosing the wages of the employee
20 or another employee, if such employee has volun-
21 tarily disclosed the wages of such employee;

22 “(2) prohibit an employee from requesting from
23 the employer an explanation of differentials in com-
24 pensation among employees; or

1 “(3) take an adverse employment action against
2 an employee for—

3 “(A) conduct described under paragraphs
4 (1) or (2); or

5 “(B) encouraging employees to engage in
6 conduct described in such paragraphs.

7 “(c) LIMITATIONS RELATING TO DISCUSSION OF
8 WAGES.—(1) An employer may impose reasonable time,
9 place, and manner limitations on conduct described under
10 subsection (b) if such limitations are written and available
11 to each employee.

12 “(2) Such limitations may include a prohibition on
13 the discussion by an employee of the wages of another em-
14 ployee if such employee did not voluntarily disclose the
15 wages of such employee.

16 “(d) SALARY EXPECTATION CONVERSATION.—Noth-
17 ing in this section shall be construed to prevent an em-
18 ployer from—

19 “(1) inquiring about the salary expectations of
20 a prospective employee; or

21 “(2) providing information to such employee
22 about the compensation and benefits offered in rela-
23 tion to the position.

24 “(e) DEFINITION.—In this section, the term ‘wage
25 history’ means the wages paid to the prospective employee

1 by the prospective employee's current employer or previous
2 employer.”.

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

6 “(f) Any person who violates the provisions of section
7 8 shall be liable to each employee for an amount equal
8 to the sum of—

9 “(1) \$2,000 for a first offense, increased by an
10 additional \$500 for each subsequent offense, not to
11 exceed \$5,000; and

12 “(2) with respect to an employee of the em-
13 ployer, the amount that the employee would have re-
14 ceived but for such violation and the amount actu-
15 ally received by such employee.”.

16 **SEC. 6. NEGOTIATION SKILLS TRAINING.**

17 (a) PROGRAM AUTHORIZED.—

18 (1) IN GENERAL.—The Secretary of Labor,
19 after consultation with the Secretary of Education,
20 is authorized to establish and carry out a grant pro-
21 gram.

22 (2) GRANTS.—In carrying out the program, the
23 Secretary of Labor may make grants on a competi-
24 tive basis to eligible entities to carry out negotiation
25 skills training programs for the purposes of address-

1 ing pay disparities, including through outreach to
2 women and girls.

3 (3) ELIGIBLE ENTITIES.—To be eligible to re-
4 ceive a grant under this subsection, an entity shall
5 be a public agency, such as a State, a local govern-
6 ment in a metropolitan statistical area (as defined
7 by the Office of Management and Budget), a State
8 educational agency, or a local educational agency, a
9 private nonprofit organization, or a community-
10 based organization.

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

16 (5) USE OF FUNDS.—An entity that receives a
17 grant under this subsection shall use the funds made
18 available through the grant to carry out an effective
19 negotiation skills training program for the purposes
20 described in paragraph (2).

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

1 (1) in the case of the Secretary of Education,
2 the Elementary and Secondary Education Act of
3 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins
4 Career and Technical Education Act of 2006 (20
5 U.S.C. 2301 et seq.), the Higher Education Act of
6 1965 (20 U.S.C. 1001 et seq.), and other programs
7 carried out by the Department of Education that the
8 Secretary of Education determines to be appro-
9 priate; and

10 (2) in the case of the Secretary of Labor, the
11 Workforce Innovation and Opportunity Act (29
12 U.S.C. 3101 et seq.), and other programs carried
13 out by the Department of Labor that the Secretary
14 of Labor determines to be appropriate.

15 (c) REPORT.—Not later than 18 months after the
16 date of enactment of this Act, and annually thereafter,
17 the Secretary of Labor, in consultation with the Secretary
18 of Education, shall prepare and submit to Congress a re-
19 port describing the activities conducted under this section
20 and evaluating the effectiveness of such activities in
21 achieving the purposes of this section.

22 **SEC. 7. DEPARTMENT OF LABOR STUDY.**

23 The Comptroller General shall, not later than 180
24 days after the date of the enactment of this Act, submit
25 to Congress a study on the causes and effects of—

- 1 (1) pay disparities among men and women;
- 2 (2) with respect to employees that leave the
- 3 workforce for parental reasons (commonly referred
- 4 to as the “Manager’s Gap”), the impact on pay and
- 5 opportunity potential; and
- 6 (3) the disparities in negotiation skills among
- 7 men and women upon entering the workforce.

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