

117TH CONGRESS
1ST SESSION

H. R. 2490

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

APRIL 13, 2021

Mr. SMITH of New Jersey 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 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.**

4 This Act may be cited as the “Paycheck Fairness
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Women have entered the workforce in
2 record numbers over the past 50 years.

3 (2) Despite the enactment of the Equal Pay Act
4 of 1963, many women continue to earn significantly
5 lower pay than men for equal work. These pay dis-
6 parities exist in both the private and governmental
7 sectors. Pay disparities are especially severe for
8 women and girls of color.

9 (3) In many instances, the pay disparities can
10 only be due to continued intentional discrimination
11 or the lingering effects of past discrimination. After
12 controlling for educational attainment, occupation,
13 industry, union status, race, ethnicity, and labor
14 force experience roughly 40 percent of the pay gap
15 remains unexplained.

16 (4) The existence of such pay disparities—

17 (A) depresses the wages of working fami-
18 lies who rely on the wages of all members of the
19 family to make ends meet;

20 (B) undermines women’s retirement secu-
21 rity, which is often based on earnings while in
22 the workforce;

23 (C) prevents women from realizing their
24 full economic potential, particularly in terms of
25 labor force participation and attachment;

1 (D) has been spread and perpetuated,
2 through commerce and the channels and instru-
3 mentalities of commerce, among the workers of
4 the several States;

5 (E) burdens commerce and the free flow of
6 goods in commerce;

7 (F) constitutes an unfair method of com-
8 petition in commerce;

9 (G) tends to cause labor disputes, as evi-
10 denced by the tens of thousands of charges filed
11 with the Equal Employment Opportunity Com-
12 mission against employers between 2010 and
13 2016;

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

16 (I) in many instances, may deprive workers
17 of equal protection on the basis of sex in viola-
18 tion of the 5th and 14th Amendments to the
19 Constitution.

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

1 (B) These barriers have resulted, in significant
2 part, because the Equal Pay Act of 1963 has not
3 worked as Congress originally intended. Improve-
4 ments and modifications to the law are necessary to
5 ensure that the Act provides effective protection to
6 those subject to pay discrimination on the basis of
7 their sex.

8 (C) Elimination of such barriers would have
9 positive effects, including—

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

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

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

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

22 (v) ensuring equal protection pursuant to
23 Congress' power to enforce the 5th and 14th
24 Amendments to the Constitution.

1 (6) The Department of Labor and the Equal
2 Employment Opportunity Commission carry out
3 functions to help ensure that women receive equal
4 pay for equal work.

5 (7) The Department of Labor is responsible
6 for—

7 (A) collecting and making publicly avail-
8 able information about women’s pay;

9 (B) ensuring that companies receiving
10 Federal contracts comply with anti-discrimina-
11 tion affirmative action requirements of Execu-
12 tive Order 11246 (relating to equal employment
13 opportunity);

14 (C) disseminating information about wom-
15 en’s rights in the workplace;

16 (D) helping women who have been victims
17 of pay discrimination obtain a remedy; and

18 (E) investigating and prosecuting systemic
19 gender based pay discrimination involving gov-
20 ernment contractors.

21 (8) The Equal Employment Opportunity Com-
22 mission is the primary enforcement agency for
23 claims made under the Equal Pay Act of 1963, and
24 issues regulations and guidance on appropriate in-
25 terpretations of the law.

1 (9) Vigorous implementation by the Depart-
2 ment of Labor and the Equal Employment Oppor-
3 tunity Commission, increased information as a result
4 of the amendments made by this Act, wage data,
5 and more effective remedies, will ensure that women
6 are better able to recognize and enforce their rights.

7 (10) Certain employers have already made
8 great strides in eradicating unfair pay disparities in
9 the workplace and their achievements should be rec-
10 ognized.

11 **SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**
12 **QUIREMENTS.**

13 (a) **BONA FIDE FACTOR DEFENSE AND MODIFICA-**
14 **TION OF SAME ESTABLISHMENT REQUIREMENT.**—Section
15 6(d)(1) of the Fair Labor Standards Act of 1938 (29
16 U.S.C. 206(d)(1)) is amended—

17 (1) by striking “No employer having” and in-
18 serting “(A) No employer having”;

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

22 (3) by inserting at the end the following:

23 “(B) The bona fide factor defense described in sub-
24 paragraph (A)(iv) shall apply only if the employer dem-
25 onstrates that such factor (i) is not based upon or derived

1 from a sex-based differential in compensation; (ii) is job-
2 related with respect to the position in question; (iii) is con-
3 sistent with business necessity; and (iv) accounts for the
4 entire differential in compensation at issue. Such defense
5 shall not apply where the employee demonstrates that an
6 alternative employment practice exists that would serve
7 the same business purpose without producing such dif-
8 ferential and that the employer has refused to adopt such
9 alternative practice.

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

18 (b) NONRETALIATION PROVISION.—Section 15 of the
19 Fair Labor Standards Act of 1938 (29 U.S.C. 215) is
20 amended—

21 (1) in subsection (a)—

22 (A) in paragraph (3), by striking “em-
23 ployee has filed” and all that follows and insert-
24 ing “employee—

1 “(A) has made a charge or filed any com-
2 plaint or instituted or caused to be instituted
3 any investigation, proceeding, hearing, or action
4 under or related to this Act, including an inves-
5 tigation conducted by the employer, or has tes-
6 tified or is planning to testify or has assisted or
7 participated in any manner in any such inves-
8 tigation, proceeding, hearing or action, or has
9 served or is planning to serve on an industry
10 committee; or

11 “(B) has inquired about, discussed, or dis-
12 closed the wages of the employee or another
13 employee (such as by inquiring or discussing
14 with the employer why the wages of the em-
15 ployee are set at a certain rate or salary);”;

16 (B) in paragraph (5), by striking the pe-
17 riod at the end and inserting “; or”; and

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

19 “(6) to require an employee to sign a contract
20 or waiver that would prohibit the employee from dis-
21 closing information about the employee’s wages.”;
22 and

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

24 “(c) Subsection (a)(3)(B) shall not apply to instances
25 in which an employee who has access to the wage informa-

1 tion of other employees as a part of such employee’s essen-
2 tial job functions discloses the wages of such other employ-
3 ees to individuals who do not otherwise have access to such
4 information, unless such disclosure is in response to a
5 complaint or charge or in furtherance of an investigation,
6 proceeding, hearing, or action under section 6(d), includ-
7 ing an investigation conducted by the employer. Nothing
8 in this subsection shall be construed to limit the rights
9 of an employee provided under any other provision of
10 law.”.

11 (c) ENHANCED PENALTIES.—Section 16(b) of the
12 Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is
13 amended—

14 (1) by inserting after the first sentence the fol-
15 lowing: “Any employer who violates section 6(d)
16 shall additionally be liable for such compensatory
17 damages, or, where the employee demonstrates that
18 the employer acted with malice or reckless indiffer-
19 ence, punitive damages as may be appropriate, ex-
20 cept that the United States shall not be liable for
21 punitive damages.”;

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

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

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

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

12 (A) by striking “in such action” and in-
13 serting “in any action brought to recover the li-
14 ability prescribed in any of the preceding sen-
15 tences of this subsection”; and

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

18 (d) ACTION BY SECRETARY.—Section 16(c) of the
19 Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is
20 amended—

21 (1) in the first sentence—

22 (A) by inserting “or, in the case of a viola-
23 tion of section 6(d), additional compensatory or
24 punitive damages, as described in subsection
25 (b),” before “and the agreement”; and

1 (B) by inserting before the period the fol-
2 lowing: “, or such compensatory or punitive
3 damages, as appropriate”;

4 (2) in the second sentence, by inserting before
5 the period the following: “and, in the case of a viola-
6 tion of section 6(d), additional compensatory or pu-
7 nitive damages, as described in subsection (b)”;

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

11 (4) in the sixth sentence—

12 (A) by striking “commenced in the case”
13 and inserting “commenced—
14 “(1) in the case”;

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

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

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

21 **SEC. 4. TRAINING.**

22 The Equal Employment Opportunity Commission
23 and the Office of Federal Contract Compliance Programs,
24 subject to the availability of funds appropriated under sec-
25 tion 11, shall provide training to Commission employees

1 and affected individuals and entities on matters involving
2 discrimination in the payment of wages.

3 **SEC. 5. NEGOTIATION SKILLS TRAINING.**

4 (a) PROGRAM AUTHORIZED.—

5 (1) IN GENERAL.—The Secretary of Labor,
6 after consultation with the Secretary of Education,
7 is authorized to establish and carry out a grant pro-
8 gram.

9 (2) GRANTS.—In carrying out the program, the
10 Secretary of Labor may make grants on a competi-
11 tive basis to eligible entities to carry out negotiation
12 skills training programs for the purposes of address-
13 ing pay disparities, including through outreach to
14 women and girls.

15 (3) ELIGIBLE ENTITIES.—To be eligible to re-
16 ceive a grant under this subsection, an entity shall
17 be a public agency, such as a State, a local govern-
18 ment in a metropolitan statistical area (as defined
19 by the Office of Management and Budget), a State
20 educational agency, or a local educational agency, a
21 private nonprofit organization, or a community-
22 based organization.

23 (4) APPLICATION.—To be eligible to receive a
24 grant under this subsection, an entity shall submit
25 an application to the Secretary of Labor at such

1 time, in such manner, and containing such informa-
2 tion as the Secretary of Labor may require.

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

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

13 (1) in the case of the Secretary of Education,
14 the Elementary and Secondary Education Act of
15 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins
16 Career and Technical Education Act of 2006 (20
17 U.S.C. 2301 et seq.), the Higher Education Act of
18 1965 (20 U.S.C. 1001 et seq.), and other programs
19 carried out by the Department of Education that the
20 Secretary of Education determines to be appro-
21 priate; and

22 (2) in the case of the Secretary of Labor, the
23 Workforce Innovation and Opportunity Act (29
24 U.S.C. 3101 et seq.), and other programs carried

1 out by the Department of Labor that the Secretary
2 of Labor determines to be appropriate.

3 (c) REPORT.—Not later than 18 months after the
4 date of enactment of this Act, and annually thereafter,
5 the Secretary of Labor, in consultation with the Secretary
6 of Education, shall prepare and submit to Congress a re-
7 port describing the activities conducted under this section
8 and evaluating the effectiveness of such activities in
9 achieving the purposes of this section.

10 **SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.**

11 (a) IN GENERAL.—Not later than 18 months after
12 the date of enactment of this Act, and periodically there-
13 after, the Secretary of Labor shall conduct studies and
14 provide information to employers, labor organizations, and
15 the general public concerning the means available to elimi-
16 nate pay disparities between men and women (including
17 women who are Asian American, Black or African Amer-
18 ican, Hispanic American or Latino, Native American or
19 Alaska Native, Native Hawaiian or Pacific Islander, and
20 White American), including—

21 (1) conducting and promoting research to de-
22 velop the means to correct expeditiously the condi-
23 tions leading to the pay disparities, with specific at-
24 tention paid to women and girls from historically
25 underrepresented and minority groups;

1 (2) publishing and otherwise making available
2 to employers, labor organizations, professional asso-
3 ciations, educational institutions, the media, and the
4 general public the findings resulting from studies
5 and other materials, relating to eliminating the pay
6 disparities;

7 (3) sponsoring and assisting State, local, and
8 community informational and educational programs;

9 (4) providing information to employers, labor
10 organizations, professional associations, and other
11 interested persons on the means of eliminating the
12 pay disparities; and

13 (5) recognizing and promoting the achievements
14 of employers, labor organizations, and professional
15 associations that have worked to eliminate the pay
16 disparities.

17 (b) REPORT ON GENDER PAY GAP IN TEENAGE
18 LABOR FORCE.—

19 (1) REPORT REQUIRED.—Not later than one
20 year after the date of the enactment of this Act, the
21 Secretary of Labor, acting through the Director of
22 the Women’s Bureau and in coordination with the
23 Commissioner of Labor Statistics, shall—

24 (A) submit to Congress a report on the
25 gender pay gap in the teenage labor force; and

1 (B) make the report available on a publicly
2 accessible website of the Department of Labor.

3 (2) ELEMENTS.—The report under subsection
4 (a) shall include the following:

5 (A) An examination of trends and potential
6 solutions relating to the teenage gender pay
7 gap.

8 (B) An examination of how the teenage
9 gender pay gap potentially translates into
10 greater wage gaps in the overall labor force.

11 (C) An examination of overall lifetime
12 earnings and losses for informal and formal
13 jobs for women, including women of color.

14 (D) An examination of the teenage gender
15 pay gap, including a comparison of the average
16 amount earned by males and females, respec-
17 tively, in informal jobs, such as babysitting and
18 other freelance jobs, as well as formal jobs,
19 such as retail, restaurant, and customer service.

20 (E) A comparison of—

21 (i) the types of tasks typically per-
22 formed by women from the teenage years
23 through adulthood within certain informal
24 jobs, such as babysitting and other free-

1 lance jobs, and formal jobs, such as retail,
2 restaurant, and customer service; and

3 (ii) the types of tasks performed by
4 younger males in such positions.

5 (F) Interviews and surveys with workers
6 and employers relating to early gender-based
7 pay discrepancies.

8 (G) Recommendations for—

9 (i) addressing pay inequality for
10 women from the teenage years through
11 adulthood, including such women of color;

12 (ii) addressing any disadvantages ex-
13 perience by young women with respect to
14 work experience and professional develop-
15 ment;

16 (iii) the development of standards and
17 best practices for workers and employees
18 to ensure better pay for young women and
19 the prevention of early inequalities in the
20 workplace; and

21 (iv) expanding awareness for teenage
22 girls on pay rates and employment rights
23 in order to reduce greater inequalities in
24 the overall labor force.

1 **SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR**
2 **PAY EQUITY IN THE WORKPLACE.**

3 (a) IN GENERAL.—There is established the Secretary
4 of Labor’s National Award for Pay Equity in the Work-
5 place, which shall be awarded, on an annual basis, to an
6 employer to encourage proactive efforts to comply with
7 section 6(d) of the Fair Labor Standards Act of 1938 (29
8 U.S.C. 206(d)), as amended by this Act.

9 (b) CRITERIA FOR QUALIFICATION.—The Secretary
10 of Labor shall set criteria for receipt of the award, includ-
11 ing a requirement that an employer has made substantial
12 effort to eliminate pay disparities between men and
13 women, and deserves special recognition as a consequence
14 of such effort. The Secretary shall establish procedures for
15 the application and presentation of the award.

16 (c) BUSINESS.—In this section, the term “employer”
17 includes—

18 (1)(A) a corporation, including a nonprofit cor-
19 poration;

20 (B) a partnership;

21 (C) a professional association;

22 (D) a labor organization; and

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

25 (2) an entity carrying out an education referral
26 program, a training program, such as an apprentice-

1 ship or management training program, or a similar
2 program; and

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

6 **SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL**
7 **EMPLOYMENT OPPORTUNITY COMMISSION.**

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

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

17 “(2) In carrying out paragraph (1), the Commission
18 shall have as its primary consideration the most effective
19 and efficient means for enhancing the enforcement of Fed-
20 eral laws prohibiting pay discrimination. For this purpose,
21 the Commission shall consider factors including the im-
22 position of burdens on employers, the frequency of required
23 reports (including the size of employers required to pre-
24 pare reports), appropriate protections for maintaining

1 data confidentiality, and the most effective format to re-
2 port such data.

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

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

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

13 “(B) Subject to adjustment under subparagraph (C),
14 the taxable compensation ranges described in this sub-
15 paragraph are as follows:

16 “(i) Not more than \$19,239.

17 “(ii) Not less than \$19,240 and not more than
18 \$24,439.

19 “(iii) Not less than \$24,440 and not more than
20 \$30,679.

21 “(iv) Not less than \$30,680 and not more than
22 \$38,999.

23 “(v) Not less than \$39,000 and not more than
24 \$49,919.

1 “(vi) Not less than \$49,920 and not more than
2 \$62,919.

3 “(vii) Not less than \$62,920 and not more than
4 \$80,079.

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

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

9 “(x) Not less than \$128,960 and not more than
10 \$163,799.

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

13 “(xii) Not less than \$208,000.

14 “(C) The Commission may adjust the taxable com-
15 pensation ranges under subparagraph (B)—

16 “(i) if the Commission determines that such ad-
17 justment is necessary to enhance enforcement of
18 Federal laws prohibiting pay discrimination; or

19 “(ii) for inflation, in consultation with the Bu-
20 reau of Labor Statistics.

21 “(D) In collecting data described in subparagraph
22 (A)(ii), the Commission shall provide that, with respect
23 to an employee who the employer is not required to com-
24 pensate for overtime employment under section 7 of the

1 Fair Labor Standards Act of 1938 (29 U.S.C. 207), an
2 employer may report—

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

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

9 “(E) The categories described in this subparagraph
10 shall be determined by the Commission and shall in-
11 clude—

12 “(i) race;

13 “(ii) ethnic identity;

14 “(iii) sex; and

15 “(iv) job categories, including the job categories
16 described in the instructions for the Equal Employ-
17 ment Opportunity Employer Information Report
18 EEO-1, as in effect on the date of the enactment
19 of this subsection.

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

22 “(i) to enhance—

23 “(I) the investigation of charges filed
24 under section 706 or section 6(d) of the Fair

1 Labor Standards Act of 1938 (29 U.S.C.
2 206(d)); and

3 “(II) the allocation of resources to inves-
4 tigate such charges; and

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

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

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

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

19 “(B) the Commission determines appropriate.”.

20 **SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**
21 **PAY EQUITY DATA COLLECTION.**

22 (a) BUREAU OF LABOR STATISTICS DATA COLLEC-
23 TION.—The Commissioner of Labor Statistics shall con-
24 tinue to collect data on women workers in the Current
25 Employment Statistics survey.

1 (b) OFFICE OF FEDERAL CONTRACT COMPLIANCE
2 PROGRAMS INITIATIVES.—The Director of the Office of
3 Federal Contract Compliance Programs shall ensure that
4 employees of the Office—

5 (1)(A) shall use the full range of investigatory
6 tools at the Office’s disposal, including pay grade
7 methodology;

8 (B) in considering evidence of possible com-
9 pensation discrimination—

10 (i) shall not limit its consideration to a
11 small number of types of evidence; and

12 (ii) shall not limit its evaluation of the evi-
13 dence to a small number of methods of evalu-
14 ating the evidence; and

15 (C) shall not require a multiple regression anal-
16 ysis or anecdotal evidence for a compensation dis-
17 crimination case;

18 (2) for purposes of its investigative, compliance,
19 and enforcement activities, shall define “similarly
20 situated employees” in a way that is consistent with
21 and not more stringent than the definition provided
22 in item 1 of subsection A of section 10–III of the
23 Equal Employment Opportunity Commission Com-
24 pliance Manual (2000), and shall consider only fac-

1 tors that the Office’s investigation reveals were used
2 in making compensation decisions; and

3 (3) shall implement a survey to collect com-
4 pensation data and other employment-related data
5 (including hiring, termination, and promotion data)
6 and designate not less than half of all nonconstruc-
7 tion contractor establishments each year to prepare
8 and file such survey, and shall review and utilize the
9 responses to such survey to identify contractor es-
10 tablishments for further evaluation and for other en-
11 forcement purposes as appropriate.

12 (c) DEPARTMENT OF LABOR DISTRIBUTION OF
13 WAGE DISCRIMINATION INFORMATION.—The Secretary of
14 Labor shall make readily available (in print, on the De-
15 partment of Labor website, and through any other forum
16 that the Department may use to distribute compensation
17 discrimination information), accurate information on com-
18 pensation discrimination, including statistics, explanations
19 of employee rights, historical analyses of such discrimina-
20 tion, instructions for employers on compliance, and any
21 other information that will assist the public in under-
22 standing and addressing such discrimination.

1 **SEC. 10. PROHIBITIONS RELATING TO PROSPECTIVE EM-**
2 **PLOYEES' SALARY AND BENEFIT HISTORY.**

3 (a) IN GENERAL.—The Fair Labor Standards Act of
4 1938 (29 U.S.C. 201 et seq.) is amended by inserting
5 after section 7 the following new section:

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

8 “(a) IN GENERAL.—It shall be an unlawful practice
9 for an employer to—

10 “(1) rely on the wage history of a prospective
11 employee in considering the prospective employee for
12 employment, including requiring that a prospective
13 employee’s prior wages satisfy minimum or max-
14 imum criteria as a condition of being considered for
15 employment;

16 “(2) rely on the wage history of a prospective
17 employee in determining the wages for such prospec-
18 tive employee, except that an employer may rely on
19 wage history if it is voluntarily provided by a pro-
20 spective employee, after the employer makes an offer
21 of employment with an offer of compensation to the
22 prospective employee, to support a wage higher than
23 the wage offered by the employer;

24 “(3) seek from a prospective employee or any
25 current or former employer the wage history of the
26 prospective employee, except that an employer may

1 seek to confirm prior wage information only after an
2 offer of employment with compensation has been
3 made to the prospective employee and the prospec-
4 tive employee responds to the offer by providing
5 prior wage information to support a wage higher
6 than that offered by the employer; or

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

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

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

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

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

21 “(f)(1) Any person who violates the provisions of sec-
22 tion 8 shall—

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

1 “(B) be liable to each employee or prospective
2 employee who was the subject of the violation for
3 special damages not to exceed \$10,000 plus attor-
4 neys’ fees, and shall be subject to such injunctive re-
5 lief as may be appropriate.

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

11 “(A) the employees or prospective employees;
12 and

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

15 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

16 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
17 are authorized to be appropriated such sums as may be
18 necessary to carry out this Act.

19 (b) **PROHIBITION ON EARMARKS.**—None of the funds
20 appropriated pursuant to subsection (a) for purposes of
21 the grant program in section 5 of this Act may be used
22 for a congressional earmark as defined in clause 9(e) of
23 rule XXI of the Rules of the House of Representatives.

1 **SEC. 12. SMALL BUSINESS ASSISTANCE.**

2 (a) **EFFECTIVE DATE.**—This Act and the amend-
3 ments made by this Act shall take effect on the date that
4 is 6 months after the date of enactment of this Act.

5 (b) **TECHNICAL ASSISTANCE MATERIALS.**—The Sec-
6 retary of Labor and the Commissioner of the Equal Em-
7 ployment Opportunity Commission shall jointly develop
8 technical assistance material to assist small enterprises in
9 complying with the requirements of this Act and the
10 amendments made by this Act.

11 (c) **SMALL BUSINESSES.**—A small enterprise shall be
12 exempt from the provisions of this Act, and the amend-
13 ments made by this Act, to the same extent that such en-
14 terprise is exempt from the requirements of the Fair
15 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) pur-
16 suant to clauses (i) and (ii) of section 3(s)(1)(A) of such
17 Act (29 U.S.C. 203(s)(1)(A)).

18 **SEC. 13. RULE OF CONSTRUCTION.**

19 Nothing in this Act, or in any amendments made by
20 this Act, shall affect the obligation of employers and em-
21 ployees to fully comply with all applicable immigration
22 laws, including being subject to any penalties, fines, or
23 other sanctions.

24 **SEC. 14. SEVERABILITY.**

25 If any provision of this Act, an amendment made by
26 this Act, or the application of that provision or amend-

1 ment to particular persons or circumstances is held invalid
2 or found to be unconstitutional, the remainder of this Act,
3 the amendments made by this Act, or the application of
4 that provision to other persons or circumstances shall not
5 be affected.

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