

118TH CONGRESS  
1ST SESSION

# H. R. 5053

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2023

Ms. STEFANIK (for herself, Ms. FOXX, Mr. VALADAO, Mr. DIAZ-BALART, Mr. ALLEN, Mrs. MILLER-MEEKS, and Mr. KELLY of Pennsylvania) 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 enhance provisions related to wage 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be referred to as the “Wage Equity  
5 Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 (1) In 1963, Congress passed on a bipartisan  
8 basis the Equal Pay Act of 1963 to prohibit dis-  
9 crimination on account of sex in the payment of

1 wages for equal work performed by employees for  
2 employers engaged in commerce or in the production  
3 of goods for commerce.

4 (2) Following the passage of such Act, in 1964,  
5 Congress passed on a bipartisan basis the Civil  
6 Rights Act of 1964. Since the passage of both the  
7 Equal Pay Act of 1963 and the Civil Rights Act of  
8 1964, women have made significant strides, both in  
9 the workforce and in their educational pursuits.

10 (3) Prior to the COVID–19 pandemic, there  
11 were over 77,000,000 women in the workforce, the  
12 most in American history. Of the 2,000,000 jobs  
13 created in 2019, 53 percent went to women. This  
14 follows a trend that has been rising for some time.  
15 Women are graduating from college at a higher rate  
16 than their male counter parts, making up 61 percent  
17 of all college degrees conferred in 2018. Additionally,  
18 according to a recent survey of working women,  
19 more than half are their family’s primary bread-  
20 winner.

21 (4) The COVID–19 pandemic has had a signifi-  
22 cant impact on working women, resulting in over 2  
23 million women leaving the workforce since February  
24 2020.

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

4 **SEC. 3. CLARIFYING SEX-BASED DISCRIMINATION PROHIBI-**  
5 **TION.**

6           Section 6(d)(1) of the Fair Labor Standards Act of  
7 1938 (29 U.S.C. 206(d)(1)) is amended by inserting  
8 “bona fide business-related” after “any other”.

9 **SEC. 4. JOB AND WAGE ANALYSIS.**

10          Section 16 of the Fair Labor Standards Act of 1938  
11 (29 U.S.C. 216) is amended by adding at the end the fol-  
12 lowing:

13          “(f)(1) An employer shall not be liable in an action  
14 brought against the employer for a violation of section  
15 6(d) if—

16               “(A) during the period beginning on the date  
17 that is 3 years before the date on which the action  
18 is brought and ending on the date that is 1 day be-  
19 fore the date on which the action is brought, such  
20 employer completes a job and wage analysis audit to  
21 determine whether there are differentials in wage  
22 rates among such employees that may violate section  
23 6(d);

24               “(B) such employer takes reasonable steps to  
25 remedy any such differentials;

1           “(C) such job and wage analysis audit is con-  
2           ducted and such reasonable steps are taken in good  
3           faith to investigate whether any such differentials  
4           exist; and

5           “(D) such audit is reasonable in detail and  
6           scope with respect to the size of the employer.

7           “(2) A job and wage analysis audit under this section  
8           and remedial action taken in response to the findings of  
9           such audit—

10           “(A) may only be admissible by the employer  
11           for the purposes of showing—

12                   “(i) such audit was conducted; and

13                   “(ii) such reasonable steps were taken; and

14           “(B) shall not be discoverable or admissible for  
15           any other purpose in any claim against the em-  
16           ployer.

17           “(3) An employer who has not completed a job and  
18           wage analysis audit under this subsection shall not be sub-  
19           ject to a negative or adverse inference as a result of not  
20           having completed such audit.

21           “(4) An employer who has completed a job and wage  
22           analysis audit that does not meet the requirements of sub-  
23           paragraph (D) of paragraph (1), but otherwise meets the  
24           requirements of such paragraph, shall not be liable for liq-  
25           uidated damages under subsection (b).

1 “(5) In this section—

2 “(A) the term ‘job and wage analysis audit’  
3 means an audit conducted by the employer for the  
4 purpose of identifying wage disparities among em-  
5 ployees on the basis of sex; and

6 “(B) the term ‘reasonable steps’, with respect  
7 to differentials in wages among employees that may  
8 violate section 6(d), means steps that are reasonable  
9 to address such differentials taking into account—

10 “(i) the amount of time that has passed  
11 since the date on which the audit was initiated;

12 “(ii) the nature and degree of progress re-  
13 sulting from such reasonable steps toward com-  
14 pliance with section 6(d) compared to the num-  
15 ber of employees with respect to whom a viola-  
16 tion may exist and the amount of the wage rate  
17 differentials among such employees; and

18 “(iii) the size and resources of the em-  
19 ployer.”.

20 **SEC. 5. WAGE HISTORY; DISCUSSION OF WAGES.**

21 (a) IN GENERAL.—The Fair Labor Standards Act of  
22 1938 (29 U.S.C. 201 et seq.) is amended by inserting  
23 after section 7 the following new section:

1 **“SEC. 8. PROVISIONS RELATING TO WAGE HISTORY AND**  
2 **DISCUSSION OF WAGE.**

3 “(a) **REQUIREMENTS AND PROHIBITIONS RELATING**  
4 **TO WAGE HISTORY.**—It shall be an unlawful practice for  
5 a person to, after the date of enactment of the Wage Eq-  
6 uity Act of 2023—

7 “(1) rely on the wage history of a prospective  
8 employee—

9 “(A) in considering such prospective em-  
10 ployee for employment, including by requiring  
11 that the wage history of such prospective em-  
12 ployee satisfy minimum or maximum criteria as  
13 a condition of being considered for employment;  
14 or

15 “(B) in determining the rate of wage for  
16 such prospective employee; or

17 “(2) seek, or require a prospective employee to  
18 disclose, the wage history of such prospective em-  
19 ployee.

20 “(b) **VOLUNTARY DISCLOSURE EXCEPTIONS.**—

21 “(1) **IN GENERAL.**—Subsection (a)(1) shall not  
22 apply with respect to a prospective employee who  
23 voluntarily discloses the wage history of such pro-  
24 spective employee.

25 “(2) **WAGE HISTORY VERIFICATION.**—Notwith-  
26 standing subsection (a)(2), a person may take ac-

1        tions necessary to verify the wage history of a pro-  
2        spective employee if such wage history is voluntarily  
3        disclosed to the person by such prospective em-  
4        ployee.

5        “(c) PRIOR INQUIRIES.—Subsection (a) shall not  
6        apply with respect to the wage history of an employee ac-  
7        quired by an employer before the date of enactment of  
8        the Wage Equity Act of 2023, including a current employ-  
9        ee’s wage history with another employer that was re-  
10       requested and used to set an employee’s starting wage be-  
11       fore such date and which is embedded in an employee’s  
12       pay and pay increases after such date.

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

16                “(1) to prohibit an employee from inquiring  
17                about, discussing, or disclosing the wage of—

18                        “(A) the employee; or

19                        “(B) any other employee of the employer if  
20                such employee has voluntarily disclosed the  
21                wage of such employee;

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

1           “(3) to take an adverse employment action  
2           against 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           “(e) LIMITATIONS RELATING TO DISCUSSION OF  
8           WAGES.—

9                   “(1) TIME AND PLACE LIMITATIONS.—An em-  
10           ployer may impose reasonable time, place, and man-  
11           ner limitations on conduct described under sub-  
12           section (c) if such limitations are written and avail-  
13           able to each employee.

14                   “(2) INVOLUNTARY DISCLOSURE.—An employer  
15           may prohibit an employee from discussing the wages  
16           of any other employee if such other employee did not  
17           voluntarily disclose such wages to the employee dis-  
18           cussing such wages.

19           “(f) PAY EXPECTATION CONVERSATION.—Nothing  
20           in this section shall be construed to prevent a person  
21           from—

22                   “(1) inquiring about the pay expectations of a  
23           prospective employee; or



1           “(2) providing information to such employee  
2           about the compensation and benefits offered in rela-  
3           tion to the position.”.

4           (b) DEFINITIONS.—Section 3 of the Fair Labor  
5 Standards Act of 1938 (29 U.S.C. 203) is amended by  
6 adding at the end the following:

7           “(z) ‘Prospective employee’ means an individual who  
8 took an affirmative step to seek employment with a person  
9 and who is not currently employed by such person, a par-  
10 ent, subsidiary, predecessor, or related company of such  
11 person, or an employer connected by a purchase agree-  
12 ment with such person.

13           “(aa) ‘Wage history’ means the wages paid to the  
14 prospective employee by the prospective employee’s cur-  
15 rent employer or any previous employer of such em-  
16 ployee.”.

17           (c) RETALIATION.—Section 15(a)(3) of the Fair  
18 Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is  
19 amended—

20           (1) by inserting “or prospective employee” after  
21 “any employee”; and

22           (2) by inserting “or prospective employee” after  
23 “such employee”.

24           (d) PENALTY.—

1           (1) IN GENERAL.—Section 16(b) of the Fair  
2 Labor Standards Act of 1938 (29 U.S.C. 216(b)) is  
3 amended by inserting “Any person who violates the  
4 provisions of section 8 with respect to an employee  
5 or prospective employee shall be liable to such em-  
6 ployee in an amount equal to the difference between  
7 the amount that the employee or prospective em-  
8 ployee would have received but for such violation  
9 and the amount received by such employee or pro-  
10 spective employee, and in an additional equal  
11 amount as liquidated damages.” after “tips unlaw-  
12 fully kept by the employer, and in an additional  
13 equal amount as liquidated damages.”.

14           (2) CIVIL MONETARY PENALTY.—Section  
15 16(e)(2) of the Fair Labor Standards Act of 1938  
16 (29 U.S.C. 216(e)(2)) is amended by striking “6 or  
17 7” and inserting “6, 7, or 8”.

18 **SEC. 6. WAGE NEGOTIATION SKILLS EDUCATION.**

19           (a) PROGRAM AUTHORIZED.—

20           (1) IN GENERAL.—The Secretary of Labor, in  
21 consultation with the Secretary of Education, is au-  
22 thorized to establish and carry out a grant program.

23           (2) GRANTS.—In carrying out the program  
24 under paragraph (1), the Secretary of Labor may  
25 make grants on a competitive basis to eligible enti-

1 ties to carry out wage negotiation skills education  
2 programs for the purposes of addressing wage dis-  
3 parities, including through outreach to women and  
4 girls.

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

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

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

23 (b) INCORPORATING EDUCATION INTO EXISTING  
24 PROGRAMS.—The Secretary of Labor and the Secretary  
25 of Education shall issue regulations or policy guidance

1 that provides for integrating the wage negotiation skills  
2 education, to the extent practicable, into programs author-  
3 ized under—

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

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

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

1 **SEC. 7. GAO STUDY.**

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

5           (1) wage disparities among men and women;

6           (2) with respect to employees that leave the  
7 workforce for parental reasons (commonly referred  
8 to as the “Manager’s Gap”), the impact on wages  
9 and opportunity potential; and

10          (3) the disparities in wage negotiation skills  
11 among men and women upon entering the workforce.

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