

118TH CONGRESS
1ST SESSION

S. 728

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 SENATE OF THE UNITED STATES

MARCH 9, 2023

Mrs. MURRAY (for herself, Mr. SCHUMER, Mr. SANDERS, Ms. CORTEZ MASTO, Mr. REED, Mr. LUJÁN, Mr. MERKLEY, Ms. HIRONO, Mr. PADILLA, Ms. CANTWELL, Mr. SCHATZ, Mr. FETTERMAN, Mr. CASEY, Mr. MURPHY, Mr. MARKEY, Mr. BROWN, Mr. HICKENLOOPER, Mr. KING, Mr. KAINE, Ms. SINEMA, Mr. WELCH, Mr. BOOKER, Mrs. FEINSTEIN, Ms. STABENOW, Ms. WARREN, Mr. MENENDEZ, Mr. CARPER, Mr. WARNER, Ms. BALDWIN, Ms. SMITH, Ms. KLOBUCHAR, Mr. BLUMENTHAL, Mrs. GILLIBRAND, Mr. VAN HOLLEN, Mr. WARNOCK, Ms. DUCKWORTH, Mrs. SHAHEEN, Mr. HEINRICH, Mr. DURBIN, Mr. WHITEHOUSE, Mr. COONS, Mr. KELLY, Ms. HASSAN, Mr. CARDIN, Ms. ROSEN, Mr. WYDEN, Mr. BENNET, Mr. MANCHIN, Mr. OSSOFF, Mr. TESTER, and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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.**

2 This Act may be cited as the “Paycheck Fairness
3 Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

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

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

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

21 (4) The existence of such pay disparities—

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

1 (B) undermines women's retirement secu-
2 rity, which is often based on earnings while in
3 the workforce;

4 (C) prevents women from realizing their
5 full economic potential, particularly in terms of
6 labor force participation and attachment;

7 (D) has been spread and perpetuated,
8 through commerce and the channels and instru-
9 mentalities of commerce, among the workers of
10 the several States;

11 (E) burdens commerce and the free flow of
12 goods in commerce;

13 (F) constitutes an unfair method of com-
14 petition in commerce;

15 (G) tends to cause labor disputes, as evi-
16 denced by the tens of thousands of charges filed
17 with the Equal Employment Opportunity Com-
18 mission against employers between 2010 and
19 2016;

20 (H) interferes with the orderly and fair
21 marketing of goods in commerce; and

22 (I) in many instances, may deprive workers
23 of equal protection on the basis of sex in viola-
24 tion of the 5th and 14th Amendments to the
25 Constitution.

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

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

14 (C) Elimination of such barriers would have
15 positive effects, including—

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

18 (ii) substantially reducing the number of
19 working women earning unfairly low wages,
20 thereby reducing the dependence on public as-
21 sistance;

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

24 (iv) remedying the effects of past discrimi-
25 nation on the basis of sex and ensuring that in

1 the future workers are afforded equal protection
2 on the basis of sex; and

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

6 (6) The Department of Labor and the Equal
7 Employment Opportunity Commission carry out
8 functions to help ensure that women receive equal
9 pay for equal work.

10 (7) The Department of Labor is responsible
11 for—

12 (A) collecting and making publicly avail-
13 able information about women's pay;

14 (B) ensuring that companies receiving
15 Federal contracts comply with anti-discrimina-
16 tion affirmative action requirements of Execu-
17 tive Order 11246 (relating to equal employment
18 opportunity);

19 (C) disseminating information about wom-
20 en's rights in the workplace;

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

23 (E) investigating and prosecuting systemic
24 gender based pay discrimination involving gov-
25 ernment contractors.

1 (8) The Equal Employment Opportunity Com-
2 mission is the primary enforcement agency for
3 claims made under the Equal Pay Act of 1963, and
4 issues regulations and guidance on appropriate in-
5 terpretations of the law.

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

12 (10) Certain employers have already made
13 great strides in eradicating unfair pay disparities in
14 the workplace and their achievements should be rec-
15 ognized.

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

18 (a) BONA FIDE FACTOR DEFENSE AND MODIFICA-
19 TION OF SAME ESTABLISHMENT REQUIREMENT.—Section
20 6(d)(1) of the Fair Labor Standards Act of 1938 (29
21 U.S.C. 206(d)(1)) is amended—

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

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

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

5 “(B) The bona fide factor defense described in sub-
6 paragraph (A)(iv) shall apply only if the employer dem-
7 onstrates that such factor (i) is not based upon or derived
8 from a sex-based differential in compensation; (ii) is job-
9 related with respect to the position in question; (iii) is con-
10 sistent with business necessity; and (iv) accounts for the
11 entire differential in compensation at issue. Such defense
12 shall not apply where the employee demonstrates that an
13 alternative employment practice exists that would serve
14 the same business purpose without producing such dif-
15 ferential and that the employer has refused to adopt such
16 alternative practice.

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

1 (b) NONRETALIATION PROVISION.—Section 15 of the
2 Fair Labor Standards Act of 1938 (29 U.S.C. 215) is
3 amended—

4 (1) in subsection (a)—

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

8 “(A) has made a charge or filed any com-
9 plaint or instituted or caused to be instituted
10 any investigation, proceeding, hearing, or action
11 under or related to this Act, including an inves-
12 tigation conducted by the employer, or has tes-
13 tified or is planning to testify or has assisted or
14 participated in any manner in any such inves-
15 tigation, proceeding, hearing or action, or has
16 served or is planning to serve on an industry
17 committee; or

18 “(B) has inquired about, discussed, or dis-
19 closed the wages of the employee or another
20 employee (such as by inquiring or discussing
21 with the employer why the wages of the em-
22 ployee are set at a certain rate or salary);”;

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

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

1 “(6) to require an employee to sign a contract
2 or waiver that would prohibit the employee from dis-
3 closing information about the employee’s wages.”;
4 and

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

6 “(c) Subsection (a)(3)(B) shall not apply to instances
7 in which an employee who has access to the wage informa-
8 tion of other employees as a part of such employee’s essen-
9 tial job functions discloses the wages of such other employ-
10 ees to individuals who do not otherwise have access to such
11 information, unless such disclosure is in response to a
12 complaint or charge or in furtherance of an investigation,
13 proceeding, hearing, or action under section 6(d), includ-
14 ing an investigation conducted by the employer. Nothing
15 in this subsection shall be construed to limit the rights
16 of an employee provided under any other provision of
17 law.”.

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

21 (1) by inserting after the first sentence the fol-
22 lowing: “Any employer who violates section 6(d)
23 shall additionally be liable for such compensatory
24 damages, or, where the employee demonstrates that
25 the employer acted with malice or reckless indiffer-

1 ence, punitive damages as may be appropriate, ex-
2 cept that the United States shall not be liable for
3 punitive damages.”;

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

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

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

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

18 (A) by striking “in such action” and in-
19 serting “in any action brought to recover the li-
20 ability prescribed in any of the preceding sen-
21 tences of this subsection”; and

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

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

4 (1) in the first sentence—

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

9 (B) by inserting before the period the fol-
10 lowing: “, or such compensatory or punitive
11 damages, as appropriate”;

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

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

19 (4) in the sixth sentence—

20 (A) by striking “commenced in the case”
21 and inserting “commenced—
22 “(1) in the case”;

23 (B) by striking the period and inserting “;
24 or”; and

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

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

4 **SEC. 4. TRAINING.**

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

11 **SEC. 5. NEGOTIATION SKILLS TRAINING.**

12 (a) PROGRAM AUTHORIZED.—

13 (1) IN GENERAL.—The Secretary of Labor,
14 after consultation with the Secretary of Education,
15 is authorized to establish and carry out a grant pro-
16 gram.

17 (2) GRANTS.—In carrying out the program, the
18 Secretary of Labor may make grants on a competi-
19 tive basis to eligible entities to carry out negotiation
20 skills training programs for the purposes of address-
21 ing pay disparities, including through outreach to
22 women and girls.

23 (3) ELIGIBLE ENTITIES.—To be eligible to re-
24 ceive a grant under this subsection, an entity shall
25 be a public agency, such as a State, a local govern-

1 ment in a metropolitan statistical area (as defined
2 by the Office of Management and Budget), a State
3 educational agency, or a local educational agency, a
4 private nonprofit organization, or a community-
5 based organization.

6 (4) APPLICATION.—To be eligible to receive a
7 grant under this subsection, an entity shall submit
8 an application to the Secretary of Labor at such
9 time, in such manner, and containing such informa-
10 tion as the Secretary of Labor may require.

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

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

21 (1) in the case of the Secretary of Education,
22 the Elementary and Secondary Education Act of
23 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins
24 Career and Technical Education Act of 2006 (20
25 U.S.C. 2301 et seq.), the Higher Education Act of

1 1965 (20 U.S.C. 1001 et seq.), and other programs
2 carried out by the Department of Education that the
3 Secretary of Education determines to be appro-
4 priate; and

5 (2) in the case of the Secretary of Labor, the
6 Workforce Innovation and Opportunity Act (29
7 U.S.C. 3101 et seq.), and other programs carried
8 out by the Department of Labor that the Secretary
9 of Labor determines to be appropriate.

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

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

18 (a) IN GENERAL.—Not later than 18 months after
19 the date of enactment of this Act, and periodically there-
20 after, the Secretary of Labor shall conduct studies and
21 provide information to employers, labor organizations, and
22 the general public concerning the means available to elimi-
23 nate pay disparities between men and women (including
24 women who are Asian American, Black or African Amer-
25 ican, Hispanic American or Latino, Native American or

1 Alaska Native, Native Hawaiian or Pacific Islander, and
2 White American), 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, with specific at-
6 tention paid to women and girls from historically
7 underrepresented and minority groups;

8 (2) publishing and otherwise making available
9 to employers, labor organizations, professional asso-
10 ciations, educational institutions, the media, and the
11 general public the findings resulting from studies
12 and other materials, relating to eliminating the pay
13 disparities;

14 (3) sponsoring and assisting State, local, and
15 community informational and educational programs;

16 (4) providing information to employers, labor
17 organizations, professional associations, and other
18 interested persons on the means of eliminating the
19 pay disparities; and

20 (5) recognizing and promoting the achievements
21 of employers, labor organizations, and professional
22 associations that have worked to eliminate the pay
23 disparities.

24 (b) REPORT ON GENDER PAY GAP IN TEENAGE
25 LABOR FORCE.—

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

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

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

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

12 (A) An examination of trends and potential
13 solutions relating to the teenage gender pay
14 gap.

15 (B) An examination of how the teenage
16 gender pay gap potentially translates into
17 greater wage gaps in the overall labor force.

18 (C) An examination of overall lifetime
19 earnings and losses for informal and formal
20 jobs for women, including women of color.

21 (D) An examination of the teenage gender
22 pay gap, including a comparison of the average
23 amount earned by males and females, respec-
24 tively, in informal jobs, such as babysitting and

1 other freelance jobs, as well as formal jobs,
2 such as retail, restaurant, and customer service.

3 (E) A comparison of—

4 (i) the types of tasks typically per-
5 formed by women from the teenage years
6 through adulthood within certain informal
7 jobs, such as babysitting and other free-
8 lance jobs, and formal jobs, such as retail,
9 restaurant, and customer service; and

10 (ii) the types of tasks performed by
11 younger males in such positions.

12 (F) Interviews and surveys with workers
13 and employers relating to early gender-based
14 pay discrepancies.

15 (G) Recommendations for—

16 (i) addressing pay inequality for
17 women from the teenage years through
18 adulthood, including such women of color;

19 (ii) addressing any disadvantages ex-
20 perience by young women with respect to
21 work experience and professional develop-
22 ment;

23 (iii) the development of standards and
24 best practices for workers and employees
25 to ensure better pay for young women and

1 the prevention of early inequalities in the
2 workplace; and

3 (iv) expanding awareness for teenage
4 girls on pay rates and employment rights
5 in order to reduce greater inequalities in
6 the overall labor force.

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

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

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

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

24 (1)(A) a corporation, including a nonprofit cor-
25 poration;

- 1 (B) a partnership;
- 2 (C) a professional association;
- 3 (D) a labor organization; and
- 4 (E) a business entity similar to an entity de-
- 5 scribed in any of subparagraphs (A) through (D);
- 6 (2) an entity carrying out an education referral
- 7 program, a training program, such as an apprentice-
- 8 ship or management training program, or a similar
- 9 program; and
- 10 (3) an entity carrying out a joint program,
- 11 formed by a combination of any entities described in
- 12 paragraph (1) or (2).

13 **SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL**

14 **EMPLOYMENT OPPORTUNITY COMMISSION.**

15 Section 709 of the Civil Rights Act of 1964 (42

16 U.S.C. 2000e–8) is amended by adding at the end the fol-

17 lowing:

18 “(f)(1) Not later than 18 months after the date of

19 enactment of this subsection, the Commission shall pro-

20 vide for the collection from employers of compensation

21 data and other employment-related data (including hiring,

22 termination, and promotion data) disaggregated by the

23 sex, race, and ethnic identity of employees.

24 “(2) In carrying out paragraph (1), the Commission

25 shall have as its primary consideration the most effective

1 and efficient means for enhancing the enforcement of Fed-
2 eral laws prohibiting pay discrimination. For this purpose,
3 the Commission shall consider factors including the impo-
4 sition of burdens on employers, the frequency of required
5 reports (including the size of employers required to pre-
6 pare reports), appropriate protections for maintaining
7 data confidentiality, and the most effective format to re-
8 port such data.

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

14 “(i) the number of employees of the employer
15 who earn taxable compensation in an amount that
16 falls within such taxable compensation range; and

17 “(ii) the total number of hours worked by such
18 employees.

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

22 “(i) Not more than \$19,239.

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

1 “(iii) Not less than \$24,440 and not more than
2 \$30,679.

3 “(iv) Not less than \$30,680 and not more than
4 \$38,999.

5 “(v) Not less than \$39,000 and not more than
6 \$49,919.

7 “(vi) Not less than \$49,920 and not more than
8 \$62,919.

9 “(vii) Not less than \$62,920 and not more than
10 \$80,079.

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

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

15 “(x) Not less than \$128,960 and not more than
16 \$163,799.

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

19 “(xii) Not less than \$208,000.

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

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

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

3 “(D) In collecting data described in subparagraph
4 (A)(ii), the Commission shall provide that, with respect
5 to an employee who the employer is not required to com-
6 pensate for overtime employment under section 7 of the
7 Fair Labor Standards Act of 1938 (29 U.S.C. 207), an
8 employer may report—

9 “(i) in the case of a full-time employee, that
10 such employee works 40 hours per week, and in the
11 case of a part-time employee, that such employee
12 works 20 hours per week; or

13 “(ii) the actual number of hours worked by
14 such employee.

15 “(E) The categories described in this subparagraph
16 shall be determined by the Commission and shall in-
17 clude—

18 “(i) race;

19 “(ii) ethnic identity;

20 “(iii) sex; and

21 “(iv) job categories, including the job categories
22 described in the instructions for the Equal Employ-
23 ment Opportunity Employer Information Report
24 EEO-1, as in effect on the date of the enactment
25 of this subsection.

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

3 “(i) to enhance—

4 “(I) the investigation of charges filed
5 under section 706 or section 6(d) of the Fair
6 Labor Standards Act of 1938 (29 U.S.C.
7 206(d)); and

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

10 “(ii) for any other purpose that the Commission
11 determines appropriate.

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

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

20 “(A) is a private employer that has 100 or
21 more employees, including such an employer that is
22 a contractor with the Federal Government, or a sub-
23 contractor at any tier thereof; or

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

1 **SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**
2 **PAY EQUITY DATA COLLECTION.**

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

7 (b) OFFICE OF FEDERAL CONTRACT COMPLIANCE
8 PROGRAMS INITIATIVES.—The Director of the Office of
9 Federal Contract Compliance Programs shall ensure that
10 employees of the Office—

11 (1)(A) shall use the full range of investigatory
12 tools at the Office’s disposal, including pay grade
13 methodology;

14 (B) in considering evidence of possible com-
15 pensation discrimination—

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

18 (ii) shall not limit its evaluation of the evi-
19 dence to a small number of methods of evalu-
20 ating the evidence; and

21 (C) shall not require a multiple regression anal-
22 ysis or anecdotal evidence for a compensation dis-
23 crimination case;

24 (2) for purposes of its investigative, compliance,
25 and enforcement activities, shall define “similarly
26 situated employees” in a way that is consistent with

1 and not more stringent than the definition provided
2 in item 1 of subsection A of section 10–III of the
3 Equal Employment Opportunity Commission Com-
4 pliance Manual (2000), and shall consider only fac-
5 tors that the Office’s investigation reveals were used
6 in making compensation decisions; and

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

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

1 other information that will assist the public in under-
2 standing and addressing such discrimination.

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

5 (a) IN GENERAL.—The Fair Labor Standards Act of
6 1938 (29 U.S.C. 201 et seq.) is amended by inserting
7 after section 7 the following new section:

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

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

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

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

1 “(3) seek from a prospective employee or any
2 current or former employer the wage history of the
3 prospective employee, except that an employer may
4 seek to confirm prior wage information only after an
5 offer of employment with compensation has been
6 made to the prospective employee and the prospec-
7 tive employee responds to the offer by providing
8 prior wage information to support a wage higher
9 than that offered by the employer; or

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

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

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

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

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

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

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

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

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

14 “(A) the employees or prospective employees;
15 and

16 “(B) other employees or prospective employees
17 similarly situated.”.

18 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

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

22 (b) **PROHIBITION ON EARMARKS.**—None of the funds
23 appropriated pursuant to subsection (a) for purposes of
24 the grant program in section 5 of this Act may be used

1 for a congressional earmark as defined in clause 9(e) of
2 rule XXI of the Rules of the House of Representatives.

3 **SEC. 12. SMALL BUSINESS ASSISTANCE.**

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

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

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

20 **SEC. 13. RULE OF CONSTRUCTION.**

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

1 SEC. 14. SEVERABILITY.

2 If any provision of this Act, an amendment made by
3 this Act, or the application of that provision or amend-
4 ment to particular persons or circumstances is held invalid
5 or found to be unconstitutional, the remainder of this Act,
6 the amendments made by this Act, or the application of
7 that provision to other persons or circumstances shall not
8 be affected.

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