

Calendar No. 134118TH 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

JULY 18, 2023

Reported by Mr. SANDERS, without amendment

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:

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

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

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

23 (4) The existence of such pay disparities—

1 (A) depresses the wages of working fami-
2 lies who rely on the wages of all members of the
3 family to make ends meet;

4 (B) undermines women's retirement secu-
5 rity, which is often based on earnings while in
6 the workforce;

7 (C) prevents women from realizing their
8 full economic potential, particularly in terms of
9 labor force participation and attachment;

10 (D) has been spread and perpetuated,
11 through commerce and the channels and instru-
12 mentalities of commerce, among the workers of
13 the several States;

14 (E) burdens commerce and the free flow of
15 goods in commerce;

16 (F) constitutes an unfair method of com-
17 petition in commerce;

18 (G) tends to cause labor disputes, as evi-
19 denced by the tens of thousands of charges filed
20 with the Equal Employment Opportunity Com-
21 mission against employers between 2010 and
22 2016;

23 (H) interferes with the orderly and fair
24 marketing of goods in commerce; and

1 (I) in many instances, may deprive workers
2 of equal protection on the basis of sex in viola-
3 tion of the 5th and 14th Amendments to the
4 Constitution.

5 (5)(A) Artificial barriers to the elimination of
6 discrimination in the payment of wages on the basis
7 of sex continue to exist decades after the enactment
8 of the Fair Labor Standards Act of 1938 (29 U.S.C.
9 201 et seq.) and the Civil Rights Act of 1964 (42
10 U.S.C. 2000a et seq.).

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

18 (C) Elimination of such barriers would have
19 positive effects, including—

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

22 (ii) substantially reducing the number of
23 working women earning unfairly low wages,
24 thereby reducing the dependence on public as-
25 sistance;

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

3 (iv) remedying the effects of past discrimi-
4 nation on the basis of sex and ensuring that in
5 the future workers are afforded equal protection
6 on the basis of sex; and

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

10 (6) The Department of Labor and the Equal
11 Employment Opportunity Commission carry out
12 functions to help ensure that women receive equal
13 pay for equal work.

14 (7) The Department of Labor is responsible
15 for—

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

18 (B) ensuring that companies receiving
19 Federal contracts comply with anti-discrimina-
20 tion affirmative action requirements of Execu-
21 tive Order 11246 (relating to equal employment
22 opportunity);

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

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

3 (E) investigating and prosecuting systemic
4 gender based pay discrimination involving gov-
5 ernment contractors.

6 (8) The Equal Employment Opportunity Com-
7 mission is the primary enforcement agency for
8 claims made under the Equal Pay Act of 1963, and
9 issues regulations and guidance on appropriate in-
10 terpretations of the law.

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

17 (10) Certain employers have already made
18 great strides in eradicating unfair pay disparities in
19 the workplace and their achievements should be rec-
20 ognized.

21 **SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**
22 **QUIREMENTS.**

23 (a) BONA FIDE FACTOR DEFENSE AND MODIFICA-
24 TION OF SAME ESTABLISHMENT REQUIREMENT.—Section

1 6(d)(1) of the Fair Labor Standards Act of 1938 (29
2 U.S.C. 206(d)(1)) is amended—

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

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

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

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

21 “(C) For purposes of subparagraph (A), employees
22 shall be deemed to work in the same establishment if the
23 employees work for the same employer at workplaces lo-
24 cated in the same county or similar political subdivision
25 of a State. The preceding sentence shall not be construed

1 as limiting broader applications of the term ‘establish-
2 ment’ consistent with rules prescribed or guidance issued
3 by the Equal Employment Opportunity Commission.”.

4 (b) NONRETALIATION PROVISION.—Section 15 of the
5 Fair Labor Standards Act of 1938 (29 U.S.C. 215) is
6 amended—

7 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

24 (1) by inserting after the first sentence the fol-
25 lowing: “Any employer who violates section 6(d)

1 shall additionally be liable for such compensatory
2 damages, or, where the employee demonstrates that
3 the employer acted with malice or reckless indiffer-
4 ence, punitive damages as may be appropriate, ex-
5 cept that the United States shall not be liable for
6 punitive damages.”;

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

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

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

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

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

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

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

6 (1) in the first sentence—

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

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

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

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

21 (4) in the sixth sentence—

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

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

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

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

7 **SEC. 4. TRAINING.**

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

14 **SEC. 5. NEGOTIATION SKILLS TRAINING.**

15 (a) PROGRAM AUTHORIZED.—

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

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

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

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

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

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

24 (1) in the case of the Secretary of Education,
25 the Elementary and Secondary Education Act of

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

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

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

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

21 (a) IN GENERAL.—Not later than 18 months after
22 the date of enactment of this Act, and periodically there-
23 after, the Secretary of Labor shall conduct studies and
24 provide information to employers, labor organizations, and
25 the general public concerning the means available to elimi-

1 nate pay disparities between men and women (including
2 women who are Asian American, Black or African Amer-
3 ican, Hispanic American or Latino, Native American or
4 Alaska Native, Native Hawaiian or Pacific Islander, and
5 White American), including—

6 (1) conducting and promoting research to de-
7 velop the means to correct expeditiously the condi-
8 tions leading to the pay disparities, with specific at-
9 tention paid to women and girls from historically
10 underrepresented and minority groups;

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

17 (3) sponsoring and assisting State, local, and
18 community informational and educational programs;

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

23 (5) recognizing and promoting the achievements
24 of employers, labor organizations, and professional

1 associations that have worked to eliminate the pay
2 disparities.

3 (b) REPORT ON GENDER PAY GAP IN TEENAGE
4 LABOR FORCE.—

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

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

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

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

16 (A) An examination of trends and potential
17 solutions relating to the teenage gender pay
18 gap.

19 (B) An examination of how the teenage
20 gender pay gap potentially translates into
21 greater wage gaps in the overall labor force.

22 (C) An examination of overall lifetime
23 earnings and losses for informal and formal
24 jobs for women, including women of color.

1 (D) An examination of the teenage gender
2 pay gap, including a comparison of the average
3 amount earned by males and females, respec-
4 tively, in informal jobs, such as babysitting and
5 other freelance jobs, as well as formal jobs,
6 such as retail, restaurant, and customer service.

7 (E) A comparison of—

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

14 (ii) the types of tasks performed by
15 younger males in such positions.

16 (F) Interviews and surveys with workers
17 and employers relating to early gender-based
18 pay discrepancies.

19 (G) Recommendations for—

20 (i) addressing pay inequality for
21 women from the teenage years through
22 adulthood, including such women of color;

23 (ii) addressing any disadvantages ex-
24 perienceed by young women with respect to

1 work experience and professional develop-
2 ment;

3 (iii) the development of standards and
4 best practices for workers and employees
5 to ensure better pay for young women and
6 the prevention of early inequalities in the
7 workplace; and

8 (iv) expanding awareness for teenage
9 girls on pay rates and employment rights
10 in order to reduce greater inequalities in
11 the overall labor force.

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

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

20 (b) CRITERIA FOR QUALIFICATION.—The Secretary
21 of Labor shall set criteria for receipt of the award, includ-
22 ing a requirement that an employer has made substantial
23 effort to eliminate pay disparities between men and
24 women, and deserves special recognition as a consequence

1 of such effort. The Secretary shall establish procedures for
2 the application and presentation of the award.

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

5 (1)(A) a corporation, including a nonprofit cor-
6 poration;

7 (B) a partnership;

8 (C) a professional association;

9 (D) a labor organization; and

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

12 (2) an entity carrying out an education referral
13 program, a training program, such as an apprentice-
14 ship or management training program, or a similar
15 program; and

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

19 **SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL**
20 **EMPLOYMENT OPPORTUNITY COMMISSION.**

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

24 “(f)(1) Not later than 18 months after the date of
25 enactment of this subsection, the Commission shall pro-

1 vide for the collection from employers of compensation
2 data and other employment-related data (including hiring,
3 termination, and promotion data) disaggregated by the
4 sex, race, and ethnic identity of employees.

5 “(2) In carrying out paragraph (1), the Commission
6 shall have as its primary consideration the most effective
7 and efficient means for enhancing the enforcement of Fed-
8 eral laws prohibiting pay discrimination. For this purpose,
9 the Commission shall consider factors including the im-
10 position of burdens on employers, the frequency of required
11 reports (including the size of employers required to pre-
12 pare reports), appropriate protections for maintaining
13 data confidentiality, and the most effective format to re-
14 port such data.

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

20 “(i) the number of employees of the employer
21 who earn taxable compensation in an amount that
22 falls within such taxable compensation range; and

23 “(ii) the total number of hours worked by such
24 employees.

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

4 “(i) Not more than \$19,239.

5 “(ii) Not less than \$19,240 and not more than
6 \$24,439.

7 “(iii) Not less than \$24,440 and not more than
8 \$30,679.

9 “(iv) Not less than \$30,680 and not more than
10 \$38,999.

11 “(v) Not less than \$39,000 and not more than
12 \$49,919.

13 “(vi) Not less than \$49,920 and not more than
14 \$62,919.

15 “(vii) Not less than \$62,920 and not more than
16 \$80,079.

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

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

21 “(x) Not less than \$128,960 and not more than
22 \$163,799.

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

25 “(xii) Not less than \$208,000.

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

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

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

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

14 “(i) in the case of a full-time employee, that
15 such employee works 40 hours per week, and in the
16 case of a part-time employee, that such employee
17 works 20 hours per week; or

18 “(ii) the actual number of hours worked by
19 such employee.

20 “(E) The categories described in this subparagraph
21 shall be determined by the Commission and shall in-
22 clude—

23 “(i) race;

24 “(ii) ethnic identity;

25 “(iii) sex; and

1 “(iv) job categories, including the job categories
2 described in the instructions for the Equal Employ-
3 ment Opportunity Employer Information Report
4 EEO-1, as in effect on the date of the enactment
5 of this subsection.

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

8 “(i) to enhance—

9 “(I) the investigation of charges filed
10 under section 706 or section 6(d) of the Fair
11 Labor Standards Act of 1938 (29 U.S.C.
12 206(d)); and

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

15 “(ii) for any other purpose that the Commission
16 determines appropriate.

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

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

1 “(A) is a private employer that has 100 or
2 more employees, including such an employer that is
3 a contractor with the Federal Government, or a sub-
4 contractor at any tier thereof; or

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

6 **SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**
7 **PAY EQUITY DATA COLLECTION.**

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

12 (b) OFFICE OF FEDERAL CONTRACT COMPLIANCE
13 PROGRAMS INITIATIVES.—The Director of the Office of
14 Federal Contract Compliance Programs shall ensure that
15 employees of the Office—

16 (1)(A) shall use the full range of investigatory
17 tools at the Office’s disposal, including pay grade
18 methodology;

19 (B) in considering evidence of possible com-
20 pensation discrimination—

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

23 (ii) shall not limit its evaluation of the evi-
24 dence to a small number of methods of evalu-
25 ating the evidence; and

1 (C) shall not require a multiple regression anal-
2 ysis or anecdotal evidence for a compensation dis-
3 crimination case;

4 (2) for purposes of its investigative, compliance,
5 and enforcement activities, shall define “similarly
6 situated employees” in a way that is consistent with
7 and not more stringent than the definition provided
8 in item 1 of subsection A of section 10–III of the
9 Equal Employment Opportunity Commission Com-
10 pliance Manual (2000), and shall consider only fac-
11 tors that the Office’s investigation reveals were used
12 in making compensation decisions; and

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

22 (c) DEPARTMENT OF LABOR DISTRIBUTION OF
23 WAGE DISCRIMINATION INFORMATION.—The Secretary of
24 Labor shall make readily available (in print, on the De-
25 partment of Labor website, and through any other forum

1 wage history if it is voluntarily provided by a pro-
2 spective employee, after the employer makes an offer
3 of employment with an offer of compensation to the
4 prospective employee, to support a wage higher than
5 the wage offered by the employer;

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

15 “(4) discharge or in any other manner retaliate
16 against any employee or prospective employee be-
17 cause the employee or prospective employee—

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

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

22 “(b) DEFINITION.—In this section, the term ‘wage
23 history’ means the wages paid to the prospective employee
24 by the prospective employee’s current employer or previous
25 employer.”.

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

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

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

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

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

19 “(A) the employees or prospective employees;
20 and

21 “(B) other employees or prospective employees
22 similarly situated.”.

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) AUTHORIZATION OF APPROPRIATIONS.—There
3 are authorized to be appropriated such sums as may be
4 necessary to carry out this Act.

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

10 **SEC. 12. SMALL BUSINESS ASSISTANCE.**

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

14 (b) TECHNICAL ASSISTANCE MATERIALS.—The Sec-
15 retary of Labor and the Commissioner of the Equal Em-
16 ployment Opportunity Commission shall jointly develop
17 technical assistance material to assist small enterprises in
18 complying with the requirements of this Act and the
19 amendments made by this Act.

20 (c) SMALL BUSINESSES.—A small enterprise shall be
21 exempt from the provisions of this Act, and the amend-
22 ments made by this Act, to the same extent that such en-
23 terprise is exempt from the requirements of the Fair
24 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) pur-
25 suant to clauses (i) and (ii) of section 3(s)(1)(A) of such
26 Act (29 U.S.C. 203(s)(1)(A)).

1 **SEC. 13. RULE OF CONSTRUCTION.**

2 Nothing in this Act, or in any amendments made by
3 this Act, shall affect the obligation of employers and em-
4 ployees to fully comply with all applicable immigration
5 laws, including being subject to any penalties, fines, or
6 other sanctions.

7 **SEC. 14. SEVERABILITY.**

8 If any provision of this Act, an amendment made by
9 this Act, or the application of that provision or amend-
10 ment to particular persons or circumstances is held invalid
11 or found to be unconstitutional, the remainder of this Act,
12 the amendments made by this Act, or the application of
13 that provision to other persons or circumstances shall not
14 be affected.

Calendar No. 134

118TH CONGRESS
1ST Session
S. 728

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.

JULY 18, 2023

Reported without amendment