

104TH CONGRESS
2D SESSION

S. 1650

To amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 28, 1996

Mr. HARKIN (for himself, Mr. KERRY, Mr. SIMON, Mr. LEAHY, Ms. MIKULSKI, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, 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 AND REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fair Pay Act of 1995”.

6 (b) REFERENCE.—Except as provided in section 8,
7 whenever in this Act an amendment or repeal is expressed
8 in terms of an amendment to, or repeal of, a section or
9 other provision, the reference shall be considered to be

1 made to a section or other provision of the Fair Labor
2 Standards Act of 1938.

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) Wage differentials exist between equivalent
6 jobs segregated by sex, race, and national origin in
7 Government employment and in industries engaged
8 in commerce or in the production of goods for com-
9 merce:

10 (2) The existence of such wage differentials—

11 (A) depresses wages and living standards
12 for employees necessary for their health and ef-
13 ficiency;

14 (B) prevents the maximum utilization of
15 the available labor resources;

16 (C) tends to cause labor disputes, thereby
17 burdening, affecting, and obstructing com-
18 merce;

19 (D) burdens commerce and the free flow of
20 goods in commerce; and

21 (E) constitutes an unfair method of com-
22 petition.

23 (3) Discrimination in hiring and promotion has
24 played a role in maintaining a segregated work
25 force.

1 (4) Many women and people of color work in
2 occupations dominated by individuals of their same
3 sex, race, and national origin.

4 (5)(A) A General Accounting Office analysis of
5 wages in the civil service of the State of Washington
6 found that in 1985 of the 44 jobs studied that paid
7 less than the average of all equivalent jobs, approxi-
8 mately 39 percent were female-dominated and ap-
9 proximately 16 percent were male dominated.

10 (B) A study of wages in Minnesota using 1990
11 Decennial Census data found that 75 percent of the
12 wage differential between white and non-white work-
13 ers was unexplained and may be a result of discrimi-
14 nation.

15 (6) Section 6(d) of the Fair Labor Standards
16 Act of 1938 prohibits discrimination in compensa-
17 tion for “equal work” on the basis of sex.

18 (7) Title VII of the Civil Rights Act of 1964
19 prohibits discrimination in compensation because of
20 race, color, religion, national origin, and sex. The
21 United States Supreme Court, in its decision in
22 County of Washington v. Gunther, 452 U.S. 161
23 (1981), held that title VII’s prohibition against dis-
24 crimination in compensation also applies to jobs
25 which do not constitute “equal work” as defined in

1 section 6(d) of the Fair Labor Standards Act of
2 1938. Decisions of lower courts, however, have dem-
3 onstrated that further clarification of existing legis-
4 lation is necessary in order effectively to carry out
5 the intent of Congress to implement the Supreme
6 Court's holding in its Gunther decision.

7 (8) Artificial barriers to the elimination of dis-
8 crimination in compensation based upon sex, race,
9 and national origin continue to exist more than 3
10 decades after the passage of section 6(d) of the Fair
11 Labor Standards Act of 1938 and the Civil Rights
12 Act of 1964. Elimination of such barriers would
13 have positive effects, including—

14 (A) providing a solution to problems in the
15 economy created by discriminating wage dif-
16 ferentials;

17 (B) substantially reducing the number of
18 working women and people of color earning low
19 wages, thereby reducing the dependence on pub-
20 lic assistance; and

21 (C) promoting stable families by enabling
22 working family members to earn a fair rate of
23 pay.

1 **SEC. 3. EQUAL PAY FOR EQUIVALENT JOBS.**

2 (a) AMENDMENT.—Section 6 (29 U.S.C. 206) is
3 amended by adding at the end the following:

4 “(g)(1)(A)(i) Except as provided in clause (ii), no em-
5 ployer having employees subject to any provisions of this
6 section shall discriminate, within any establishment in
7 which such employees are employed, between employees on
8 the basis of sex, race, or national origin by paying wages
9 to employees in such establishment in a job that is domi-
10 nated by employees of a particular sex, race, or national
11 origin at a rate less than the rate at which the employer
12 pays wages to employees in such establishment in another
13 job that is dominated by employees of the opposite sex
14 or of a different race or national origin, respectively, for
15 work on equivalent jobs.

16 “(ii) Nothing in clause (i) shall prohibit the payment
17 of different wages to employees where such payment is
18 made pursuant to—

19 “(I) a seniority system;

20 “(II) a merit system; or

21 “(III) a system that measures earnings by
22 quantity or quality of production.

23 “(iii) The Equal Employment Opportunity Commis-
24 sion shall issue guidelines specifying criteria for determin-
25 ing whether a job is dominated by employees of a particu-

1 lar sex, race, or national origin. Such regulations shall not
2 include a list of such jobs.

3 “(B) An employer who is paying a wage rate differen-
4 tial in violation of subparagraph (A) shall not, in order
5 to comply with the provisions of such subparagraph, re-
6 duce the wage rate of any employee.

7 “(2) No labor organization or its agents representing
8 employees of an employer having employees subject to any
9 provision of this section shall cause or attempt to cause
10 such an employer to discriminate against an employee in
11 violation of paragraph (1)(A).

12 “(3) For purposes of administration and enforcement
13 of this subsection, any amounts owing to any employee
14 which have been withheld in violation of paragraph (1)(A)
15 shall be deemed to be unpaid minimum wages or unpaid
16 overtime compensation under this section or section 7.

17 “(4) As used in this subsection:

18 “(A) The term ‘labor organization’ means any
19 organization of any kind, or any agency or employee
20 representation committee or plan, in which employ-
21 ees participate and which exists for the purpose, in
22 whole or in part, of dealing with employers concern-
23 ing grievances, labor disputes, wages, rates of pay,
24 hours of employment, or conditions of work.

1 “(B) The term ‘equivalent jobs’ means jobs that
2 may be dissimilar, but whose requirements are
3 equivalent, when viewed as a composite of skills, ef-
4 fort, responsibility, and working conditions.”.

5 (b) CONFORMING AMENDMENT.—Section 13(a) (29
6 U.S.C. 213(a)) is amended in the matter before paragraph
7 (1) by striking “section 6(d)” and inserting “sections 6(d)
8 and 6(g)”.

9 **SEC. 4. PROHIBITED ACTS.**

10 Section 15(a) (29 U.S.C. 215(a)) is amended—

11 (1) by striking the period at the end of para-
12 graph (5) and inserting a semicolon; and

13 (2) by adding after paragraph (5) the following
14 new paragraphs:

15 “(6) to discriminate against any individual be-
16 cause such individual has opposed any act or prac-
17 tice made unlawful by section 6(g) or because such
18 individual made a charge, testified, assisted, or par-
19 ticipated in any manner in an investigation, proceed-
20 ing, or hearing under section 6(g); or

21 “(7) to discharge or in any other manner dis-
22 criminate against, coerce, intimidate, threaten, or
23 interfere with any employee or any other person be-
24 cause the employee inquired about, disclosed, com-
25 pared, or otherwise discussed the employee’s wages

1 or the wages of any other employee, or because the
2 employee exercised, enjoyed, aided, or encouraged
3 any other person to exercise or enjoy any right
4 granted or protected by section 6(g).”.

5 **SEC. 5. REMEDIES.**

6 Section 16 (29 U.S.C. 216) is amended—

7 (1) by adding at the end the following:

8 “(f) In any action brought under this section for vio-
9 lation of section 6(g), the court shall, in addition to any
10 other remedies awarded to the prevailing plaintiff or plain-
11 tiffs, allow expert fees as part of the costs. Any such action
12 may be maintained as a class action as provided by the
13 Federal Rules of Civil Procedure.”;

14 (2) in subsection (b), by striking “section
15 15(a)(3)” each place it occurs and inserting “para-
16 graphs (3), (6), and (7) of section 15(a)”;

17 (3) in the fourth sentence of subsection (b), by
18 striking “No employees” and inserting “Except with
19 respect to class actions brought under subsection (f),
20 no employees”.

21 **SEC. 6. RECORDS.**

22 (a) **TECHNICAL AMENDMENT.**—Section 11(e) (29
23 U.S.C. 211(c)) is amended by inserting “(1)” after “(e)”.

1 (b) RECORDS.—Section 11(c) (as amended by sub-
2 section (a)) is further amended by adding at the end the
3 following:

4 “(2)(A) Every employer subject to section 6(g) shall
5 preserve records which document and support the method,
6 system, calculations, and other bases used by the employer
7 in establishing, adjusting, and determining the wages paid
8 to the employees of the employer. Every employer subject
9 to section 6(g) shall preserve such records for such periods
10 of time, and shall make such reports therefrom to the
11 Equal Employment Opportunity Commission, as shall be
12 prescribed by the Equal Employment Opportunity Com-
13 mission by regulation or order as necessary or appropriate
14 for the enforcement of the provisions of section 6(g) or
15 any regulations promulgated pursuant to section 6(g).”.

16 (c) SMALL BUSINESS EXEMPTIONS.—Section 11(c)
17 (as amended by subsections (a) and (b)) is further amend-
18 ed by adding at the end the following:

19 “(B)(i) Every employer subject to section 6(g) that
20 has 25 or more employees on any date during the first
21 or second year after the effective date of this paragraph,
22 or 15 or more employees on any date during a subsequent
23 year, shall file with the Equal Employment Opportunity
24 Commission for the year involved a report signed by the
25 president, treasurer, or corresponding principal officer, of

1 the employer containing information in such detail as may
2 be necessary to accurately disclose the wage or salary rates
3 paid to employees in each classification, position, or job
4 title or to employees in other wage or salary groups em-
5 ployed by the employer, including information with respect
6 to the sex, race, and national origin of employees at each
7 wage or salary level in each classification, position, job
8 title, or other wage or salary group.”.

9 (d) PROTECTION OF CONFIDENTIALITY.—Section
10 11(c) (as amended by subsections (a) through (c)) is fur-
11 ther amended by adding at the end the following:

12 “(ii) The rules and regulations issued by the Equal
13 Employment Opportunity Commission under subpara-
14 graph (F), relating to the form of such a report, shall in-
15 clude requirements to protect the confidentiality of em-
16 ployees, including a requirement that the report shall not
17 contain the name of any individual employee.”.

18 (e) USE; INSPECTIONS; EXAMINATIONS; REGULA-
19 TIONS.—Section 11(c) (as amended by subsections (a)
20 through (d)) is further amended by adding at the end the
21 following:

22 “(C) The Equal Employment Opportunity Commis-
23 sion may publish any information and data that the Equal
24 Employment Opportunity Commission obtains pursuant to
25 the provisions of subparagraph (B). The Equal Employ-

1 ment Opportunity Commission may use the information
2 and data for statistical and research purposes, and com-
3 pile and publish such studies, analyses, reports, and sur-
4 veys based thereon as it may consider appropriate.

5 “(D) In order to carry out the purposes of this Act
6 the Equal Employment Opportunity Commission shall by
7 regulation make reasonable provision for the inspection
8 and examination by any person of the information and
9 data contained in any report filed with the Equal Employ-
10 ment Opportunity Commission pursuant to subparagraph
11 (B).

12 “(E) The Equal Employment Opportunity Commis-
13 sion shall by regulation provide for the furnishing of copies
14 of reports filed with the Equal Employment Opportunity
15 Commission pursuant to subparagraph (B) to any person
16 upon payment of a charge based upon the cost of the serv-
17 ice.

18 “(F) The Equal Employment Opportunity Commis-
19 sion shall issue rules and regulations prescribing the form
20 and content of reports required to be filed under subpara-
21 graph (B) and such other reasonable rules and regulations
22 as it may find necessary to prevent the circumvention or
23 evasion of such reporting requirements. In exercising its
24 authority under subparagraph (B), the Equal Employ-
25 ment Opportunity Commission may prescribe by general

1 rule simplified reports for employers for whom the Equal
2 Employment Opportunity Commission finds that because
3 of the size of the employers a detailed report would be
4 unduly burdensome.”.

5 **SEC. 7. RESEARCH, EDUCATION, AND TECHNICAL ASSIST-**
6 **ANCE PROGRAM; REPORT TO CONGRESS.**

7 Section 4(d) (29 U.S.C. 204(d)) is amended by add-
8 ing at the end the following:

9 “(4) The Equal Employment Opportunity Commis-
10 sion shall undertake studies and provide information and
11 technical assistance to employers, labor organizations, and
12 the general public concerning effective means available to
13 implement the provisions of section 6(g) prohibiting wage
14 discrimination between employees performing work in
15 equivalent jobs on the basis of sex, race, or national origin.
16 Such studies, information, and technical assistance shall
17 be based upon and include reference to the declared policy
18 of such section to eliminate such discrimination. In order
19 to achieve the purposes of such section, the Equal Employ-
20 ment Opportunity Commission shall further carry on a
21 continuing program of research, education, and technical
22 assistance including—

23 “(A) undertaking and promoting research with
24 the intent of developing means to expeditiously cor-
25 rect the conditions leading to section 6(g);

1 “(B) publishing and otherwise making available
2 to employers, labor organizations, professional asso-
3 ciations, educational institutions, the various media
4 of communication, and the general public the find-
5 ings of studies and other materials for promoting
6 compliance with section 6(g);

7 “(C) sponsoring and assisting State and com-
8 munity informational and educational programs; and

9 “(D) providing technical assistance to employ-
10 ers, labor organizations, professional associations
11 and other interested persons on means of achieving
12 and maintaining compliance with the provisions of
13 section 6(g).

14 “(5) The report submitted annually by the Equal
15 Employment Opportunity Commission to Congress pursu-
16 ant to paragraph (1) shall include a separate evaluation
17 and appraisal regarding the implementation of section
18 6(g).”.

19 **SEC. 8. CONFORMING AMENDMENTS.**

20 (a) APPLICATION.—Section 203(a)(1) of the Con-
21 gressional Accountability Act of 1995 (2 U.S.C.
22 1313(a)(1)) is amended—

23 (1) by striking “subsections (a)(1) and (d) of
24 section 6” and inserting “subsections (a)(1), (d),
25 and (g) of section 6”; and

1 (2) by striking “206 (a)(1) and (d)” and insert-
2 ing “206 (a)(1), (d), and (g)”.

3 (b) REMEDIES.—Section 203(b) of such Act (2
4 U.S.C. 1313(b)) is amended by inserting before the period
5 the following: “or, in an appropriate case, under section
6 16(f) of such Act (29 U.S.C. 216(f))”.

7 **SEC. 9. EFFECTIVE DATE.**

8 The amendments made by this Act shall take effect
9 1 year after the date of enactment of this Act.

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