

106TH CONGRESS  
1ST SESSION

# H. R. 541

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1999

Ms. DELAURO (for herself, Mr. GEPHARDT, Ms. NORTON, Mr. COSTELLO, Mr. GEJDENSON, Mrs. MALONEY of New York, Ms. PELOSI, Mrs. LOWEY, Ms. KILPATRICK, Mr. GEORGE MILLER of California, Mr. OLVER, Ms. KAPTUR, Mr. FROST, Mr. BRADY of Pennsylvania, Mr. STARK, Ms. MILLENDER-McDONALD, Mr. NADLER, Ms. WOOLSEY, Mr. SERRANO, Mr. SANDERS, Mr. MCGOVERN, Mr. McNULTY, Ms. SCHAKOWSKY, Ms. JACKSON-LEE of Texas, and Mrs. TAUSCHER) 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 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”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Women have entered the workforce in  
4 record numbers.

5 (2) Even in the 1990's, women earn signifi-  
6 cantly lower pay than men for work on jobs that re-  
7 quire equal skill, effort, and responsibility and that  
8 are performed under similar working conditions.  
9 These pay disparities exist in both the private and  
10 governmental sectors. In many instances, the pay  
11 disparities can only be due to continued intentional  
12 discrimination or the lingering effects of past dis-  
13 crimination.

14 (3) The existence of such pay disparities—

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

18 (B) prevents the optimum utilization of  
19 available labor resources;

20 (C) has been spread and perpetuated,  
21 through commerce and the channels and instru-  
22 mentalities of commerce, among the workers of  
23 the several States;

24 (D) burdens commerce and the free flow of  
25 goods in commerce;

1           (E) constitutes an unfair method of com-  
2 petition in commerce;

3           (F) leads to labor disputes burdening and  
4 obstructing commerce and the free flow of  
5 goods in commerce;

6           (G) interferes with the orderly and fair  
7 marketing of goods in commerce; and

8           (H) in many instances, may deprive work-  
9 ers of equal protection on the basis of sex in  
10 violation of the 5th and 14th amendments.

11           (4)(A) Artificial barriers to the elimination of  
12 discrimination in the payment of wages on the basis  
13 of sex continue to exist more than 3 decades after  
14 the enactment of the Fair Labor Standards Act of  
15 1938 (29 U.S.C. 201 et seq.) and the Civil Rights  
16 Act of 1964 (42 U.S.C. 2000a et seq.).

17           (B) Elimination of such barriers would have  
18 positive effects, including—

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

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

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) in the private sector, ensuring equal  
8 protection pursuant to Congress' power to en-  
9 force the 5th and 14th amendments.

10 (5) With increased information about the provi-  
11 sions added by the Equal Pay Act of 1963 and gen-  
12 eralized wage data, along with more effective rem-  
13 edies, women will be better able to recognize and en-  
14 force their rights to equal pay for work on jobs that  
15 require equal skill, effort, and responsibility and that  
16 are performed under similar working conditions.

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

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

23 (a) NONRETALIATION PROVISION.—Section 15(a)(3)  
24 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
25 215(a)(3)) is amended—

1           (1) by striking “or has” each place it appears  
2           and inserting “has”; and

3           (2) by inserting before the semicolon the follow-  
4           ing: “, or has inquired about, discussed, or otherwise  
5           disclosed the wages of the employee or another em-  
6           ployee”.

7           (b) ENHANCED PENALTIES.—Section 16(b) of the  
8           Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is  
9           amended—

10           (1) by inserting after the first sentence the fol-  
11           lowing: “Any employer who violates section 6(d)  
12           shall additionally be liable for such compensatory or  
13           punitive damages as may be appropriate, except that  
14           the United States shall not be liable for punitive  
15           damages.”;

16           (2) in the sentence beginning “An action to”,  
17           by striking “either of the preceding sentences” and  
18           inserting “any of the preceding sentences of this  
19           subsection”;

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

24           (4) by inserting after the sentence referred to  
25           in paragraph (3), the following: “Notwithstanding

1 any other provision of Federal law, any action  
2 brought to enforce section 6(d) may be maintained  
3 as a class action as provided by the Federal Rules  
4 of Civil Procedure.”; and

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

6 (A) by striking “in such action” and in-  
7 serting “in any action brought to recover the li-  
8 ability prescribed in any of the preceding sen-  
9 tences of this subsection”; and

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

12 (c) ACTION BY SECRETARY.—Section 16(c) of the  
13 Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is  
14 amended—

15 (1) in the first sentence—

16 (A) by inserting “or, in the case of a viola-  
17 tion of section 6(d), additional compensatory or  
18 punitive damages,” before “and the agree-  
19 ment”; and

20 (B) by inserting before the period the fol-  
21 lowing: “, or such compensatory or punitive  
22 damages, as appropriate”;

23 (2) in the second sentence, by inserting before  
24 the period the following: “and, in the case of a viola-

1       tion of section 6(d), additional compensatory or pu-  
2       nitive damages”;

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

6           (4) in the last sentence, by inserting after “in  
7       the complaint” the following: “or becomes a party  
8       plaintiff in a class action brought to enforce section  
9       6(d)”.

10 **SEC. 4. TRAINING.**

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

17 **SEC. 5. RESEARCH, EDUCATION, AND OUTREACH.**

18       The Secretary of Labor shall conduct studies and  
19       provide information to employers, labor organizations, and  
20       the general public concerning the means available to elimi-  
21       nate pay disparities between men and women, including—

22           (1) conducting and promoting research to de-  
23       velop the means to correct expeditiously the condi-  
24       tions leading to the pay disparities;

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

7           (3) sponsoring and assisting State and commu-  
8 nity informational and educational programs;

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

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

17           (6) convening a national summit to discuss, and  
18 consider approaches for rectifying, the pay dispari-  
19 ties.

20 **SEC. 6. TECHNICAL ASSISTANCE AND EMPLOYER RECOGNI-**  
21 **TION PROGRAM.**

22 (a) GUIDELINES.—

23 (1) IN GENERAL.—The Secretary of Labor shall  
24 develop guidelines to enable employers to evaluate  
25 job categories based on objective criteria such as



1 educational requirements, skill requirements, inde-  
2 pendence, working conditions, and responsibility, in-  
3 cluding decisionmaking responsibility and de facto  
4 supervisory responsibility.

5 (2) USE.—The guidelines developed under  
6 paragraph (1) shall be designed to enable employers  
7 voluntarily to compare wages paid for different jobs  
8 to determine if the pay scales involved adequately  
9 and fairly reflect the educational requirements, skill  
10 requirements, independence, working conditions, and  
11 responsibility for each such job with the goal of  
12 eliminating unfair pay disparities between occupa-  
13 tions traditionally dominated by men or women.

14 (3) PUBLICATION.—The guidelines shall be de-  
15 veloped under paragraph (1) and published in the  
16 Federal Register not later than 180 days after the  
17 date of enactment of this Act.

18 (b) EMPLOYER RECOGNITION.—

19 (1) PURPOSE.—It is the purpose of this sub-  
20 section to emphasize the importance of, encourage  
21 the improvement of, and recognize the excellence of  
22 employer efforts to pay wages to women that reflect  
23 the real value of the contributions of such women to  
24 the workplace.

1           (2) IN GENERAL.—To carry out the purpose of  
2 this subsection, the Secretary of Labor shall estab-  
3 lish a program under which the Secretary shall pro-  
4 vide for the recognition of employers who, pursuant  
5 to a voluntary job evaluation conducted by the em-  
6 ployer, adjust their wage scales (such adjustments  
7 shall not include the lowering of wages paid to men)  
8 using the guidelines developed under subsection (a)  
9 to ensure that women are paid fairly in comparison  
10 to men.

11           (3) TECHNICAL ASSISTANCE.—The Secretary of  
12 Labor may provide technical assistance to assist an  
13 employer in carrying out an evaluation under para-  
14 graph (2).

15           (c) REGULATIONS.—The Secretary of Labor shall  
16 promulgate such rules and regulations as may be nec-  
17 essary to carry out this section.

18 **SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR**

19 **PAY EQUITY IN THE WORKPLACE.**

20           (a) IN GENERAL.—There is established the Robert  
21 Reich National Award for Pay Equity in the Workplace,  
22 which shall be evidenced by a medal bearing the inscrip-  
23 tion “Robert Reich National Award for Pay Equity in the  
24 Workplace”. The medal shall be of such design and mate-

1 rials, and bear such additional inscriptions, as the Sec-  
2 retary of Labor may prescribe.

3 (b) CRITERIA FOR QUALIFICATION.—To qualify to  
4 receive an award under this section a business shall—

5 (1) submit a written application to the Sec-  
6 retary of Labor, at such time, in such manner, and  
7 containing such information as the Secretary may  
8 require, including at a minimum information that  
9 demonstrates that the business has made substantial  
10 effort to eliminate pay disparities between men and  
11 women, and deserves special recognition as a con-  
12 sequence; and

13 (2) meet such additional requirements and  
14 specifications as the Secretary of Labor determines  
15 to be appropriate.

16 (c) MAKING AND PRESENTATION OF AWARD.—

17 (1) AWARD.—After receiving recommendations  
18 from the Secretary of Labor, the President or the  
19 designated representative of the President shall an-  
20 nually present the award described in subsection (a)  
21 to businesses that meet the qualifications described  
22 in subsection (b).

23 (2) PRESENTATION.—The President or the des-  
24 ignated representative of the President shall present  
25 the award under this section with such ceremonies

1 as the President or the designated representative of  
2 the President may determine to be appropriate.

3 (d) BUSINESS.—In this section, the term “business”  
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. SENSE OF THE SENATE REGARDING INCREASED IN-**  
20 **FORMATION ON PAY DISPARITIES.**

21 It is the sense of the Senate that the President should  
22 take appropriate steps to increase the amount of informa-  
23 tion available with respect to wage disparities. In so doing,  
24 the President, or the designees of the President, should  
25 consider ways of collecting this data that—

1           (1) maximize the utility of the information for  
2           both the government and the public; while

3           (2) protecting individuals' privacy and minimiz-  
4           ing the burdens on reporting entities.

5 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

6           There are authorized to be appropriated such sums  
7 as may be necessary to carry out this Act.

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