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S. 2070

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

SEPTEMBER 22, 2015

Ms. AYOTTE introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Gender Advancement in Pay Act'' or the ''GAP Act''.

SEC. 2. ENHANCED PROHIBITION ON WAGE DISCRIMINATION.

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

(1) in paragraph (1)—

(A) in clause (iii), by striking ''or'' at the end;

(B) by redesignating clause (iv) as clause (vi);

(C) by inserting before clause (vi), as redesignated by subparagraph (B) of this paragraph, the following: ''(iv) a differential based on expertise; (v) a shift differential; or''; and

(D) in clause (vi), as redesignated by subparagraph (B) of this paragraph, by striking ''any other factor other than sex'' and inserting ''a business-related factor other than sex, including but not limited to education, training, or experience'';

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

''(4) If a charge is filed by or on behalf of an employee for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), and an action is

brought by or on behalf of the employee for a violation of this subsection, with respect to the same practice, or if an action is brought before the Equal Employment Opportunity Commission by or on behalf of the employee for a violation of this subsection, the statute of limitations for the action involved under section 6 of the Portal-to-Portal Act of 1947 (29 U.S.C. 255) shall be tolled until the earlier of—

"(A) the date on which the Equal Employment Opportunity Commission or the Attorney General brings an action or provides notification to the employee with respect to the charge under section 706(f)(1) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(f)(1)); or

"(B) the date that is 270 days after the date on which such charge is filed.".

SEC. 3. NONRETALIATION PROVISION.

Section 15 of the Fair Labor Standards Act of 1938 (29 U.S.C. 215) is amended—

(1) in subsection (a)(3), by striking "employee has filed" and all that follows and inserting "employee—

"(A) has made a charge or filed any complaint or instituted or caused to be instituted any investigation, proceeding, hearing, or action

under or related to this Act, including an investigation conducted by the employer, or has testified or is planning to testify or has assisted or participated in any manner in any such investigation, proceeding, hearing, or action, or has served or is planning to serve on an industry committee; or

''(B) has inquired about, discussed, or disclosed the wages of the employee or another employee, or has declined to discuss or disclose the wages of the employee;''; and

(2) by adding at the end the following:

''(c)(1) Subsection (a)(3)(B) shall not apply to an instance in which an employee who has access to the wage information of other employees as a part of such employee's essential job functions discloses the wages of any of such other employees to an individual who does not otherwise have access to such information, unless such disclosure is in response to a charge or complaint or in furtherance of an investigation, proceeding, hearing, or action under or related to section 6(d), including an investigation conducted by the employer.

''(2) Subsection (a)(3)(B) shall not apply to an instance in which an employee engages in an inquiry, discus-

sion, or disclosure that is prohibited by the terms and conditions of a provision, applicable to the employee, of—

"(A) a confidential settlement;

"(B) a severance agreement;

"(C) a noncompete, nondisclosure, or nondisparagement clause of an agreement; or

"(D) any post-employment agreement similar to an agreement described in subparagraph (A) or (B), or a clause described in subparagraph (C).

"(3) Any employer who requires an employee to sign a contract or waiver (other than a provision described in paragraph (2)) that would prohibit the employee from disclosing information about the employee's wages shall be considered to have committed an unlawful act under subsection (a)(3)(B).

"(4) Nothing in this subsection shall be construed to limit the rights of an employee provided under any other provision of law.".

SEC. 4. CIVIL PENALTY.

Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended—

(1) in paragraph (2)—

(A) by striking "(2)" and inserting "(2)(A)"; and

(B) by adding at the end the following:

"(B)(i) Any person who willfully violates section 6(d) shall be subject to—

"(I) a civil penalty in an amount described in clause (ii) for each employee affected (less the amount of any penalty the person has paid under State law for the wage differential involved); and

"(II) any penalty that may apply under subparagraph (A).

"(ii) The amount referred to in clause (i)(I) shall be—

"(I) for an employer with not more than 100 employees, the lesser of the amount of the liquidated damages available under subsection (b) or (c), or $2,500;

"(II) for an employer with not less than 101 and not more than 200 employees, the lesser of the amount of the liquidated damages available under subsection (b) or (c), or $5,000;

"(III) for an employer with not less than 201 and not more than 500 employees, the lesser of the amount of the liquidated damages available under subsection (b) or (c), or $10,000; and

"(IV) for an employer with not less than 501 employees, the lesser of the amount of the liquidated

damages available under subsection (b) or (c), or $15,000.'';

(2) in paragraph (3), in the first sentence, by striking ''this subsection'' and inserting ''this subsection (other than paragraph (2)(B)); and

(3) in paragraph (5)—

(A) in the first sentence, by striking ''violations of section 12'' and inserting ''violations of section 6(d) or section 12''; and

(B) by inserting after the first sentence the following: ''Civil penalties collected for violations of section 6(d) shall be deposited in the account created under section 5(d) of the GAP Act.''.

SEC. 5. STUDY ON HIGH-WAGE, HIGH-DEMAND OCCUPATIONS AND EQUIVALENT PAY.

(a) JOINT STUDY.—Using funds from the account created under subsection (d), the Secretary of Labor, together with the Secretary of Education, shall conduct a multistate study, through a grant to a nonprofit research institution, that includes strategies to increase the participation of women in—

(1) high-wage, high-demand occupations; and

(2) industries in which women are underrepresented.

(b) COMPTROLLER GENERAL STUDY.—Using funds from the account created under subsection (d), the Comptroller General of the United States shall conduct a multistate study to develop strategies described in subsection (a).

(c) REPORTS.—Not later than 2 years after the date of enactment of this Act—

(1) the Secretary of Labor and the Secretary of Education shall submit to Congress a report containing—

(A) a statement of the findings and conclusions of the study under subsection (a); and

(B) any recommendations the Secretary of Labor and the Secretary of Education consider appropriate based on their conclusions;

(2) the Comptroller General shall submit to Congress a report containing—

(A) a statement of the findings and conclusions of the study under subsection (b); and

(B) any recommendations the Comptroller General considers appropriate based on its conclusions; and

(3) the Secretary of Labor, the Secretary of Education, and the Comptroller General shall make

available to the public the reports described in this subsection.

(d) ACCOUNTS.—

(1) IN GENERAL.—The Secretary of Labor shall create an account to manage the funds required to conduct the studies under subsections (a) and (b) and to complete the reports under subsection (c). The account shall contain the civil penalties collected under section 16(e)(2) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)(2)).

(2) WITHDRAWAL OF FUNDS.—The Secretary of Labor is authorized to withdraw funds from the account created under subsection (d) to carry out the joint study under subsection (a).

(3) TRANSFER OF FUNDS.—At the request of the Comptroller General, the Secretary of Labor shall transfer to the Comptroller General the funds required to carry out the study under subsection (b).

SEC. 6. SMALL BUSINESS ASSISTANCE.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date that is 6 months after the date of enactment of this Act.

(b) TECHNICAL ASSISTANCE MATERIALS.—The Secretary of Labor and the Equal Employment Opportunity Commission shall jointly develop technical assistance ma-

terials to assist small businesses in complying with the requirements of this Act and the amendments made by this Act.

(c) SMALL BUSINESSES.—A small business shall be exempt from the provisions of this Act, and the amendments made by this Act, to the same extent that such business is exempt from the requirements of the Fair Labor Standards Act of 1938 pursuant to clauses (i) and (ii) of section 3(s)(1)(A) of such Act (29 U.S.C. 203(s)(1)(A)).

SEC. 7. RULE OF CONSTRUCTION.

Nothing in this Act, or in any amendment made by this Act, shall affect the obligation of employers and employees to fully comply with all applicable immigration laws, including any penalties, fines, or other sanctions.

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