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 HOUSE OF REPRESENTATIVES

APRIL 14, 2017

Ms. NORTON (for herself, Mr. POCAN, Mr. RYAN of Ohio, Mrs. DAVIS of California, and Mr. PALLONE) introduced the following bill; which was referred to the Committee on Education and the Workforce

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.

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

SECTION 1. SHORT TITLE.

(a) Short Title.—This Act may be cited as the “Fair Pay Act of 2017”.

(b) Reference.—Except as provided in section 8, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be
made to a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

SEC. 2. FINDINGS.

Congress finds the following:

(1) Wage rate differentials exist between equivalent jobs segregated by sex, race, and national origin in Government employment and in industries engaged in commerce or in the production of goods for commerce.

(2) Discrimination in hiring and promotion has played a role in maintaining a segregated work force.

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

(A) While a wage rate differential exists in nearly every occupational field, traditionally male jobs tend to pay better than traditionally female jobs which require equal skill, effort, and responsibility, and which are performed under similar working conditions.

(B) Traditionally male jobs that are low-wage require less skill, education, and certifications than traditionally female jobs that are
low-wage, despite their generally receiving higher pay.

(4) In 2015, a woman in the United States working in a full-time, year-round job earned 80 cents for every dollar earned by a man working in a full-time, year-round job.

(A) The wage gap is larger when the data is disaggregated by race. Among women who hold full-time, year-round jobs in the United States, African-American women were paid on average, only 63 percent of what White men were paid in 2015, while Native Hawaiian and Other Pacific Islander women were paid 60 percent, American Indian and Alaska Native women were paid 58 percent, and Hispanic and Latina women were paid only 54 percent.

(B) The gender pay gap persists across educational levels. As a result, women who complete college degrees are less able to pay off their student loans promptly, leaving them paying more and for a longer time than men. In 2012, among students who graduated in 2007–2008, women working full time had paid off 33 percent of their student loan debt on average,
while men working full time had paid off 44 percent of their debt.

(C) In the United States, mothers are primary or sole breadwinners in nearly 40 percent of families. Yet the wage gap for mothers is larger than for women overall. According to 2013 data, mothers employed full time, year round are paid 71 cents for every dollar paid to fathers. It is worse for single mothers with full-time, year-round jobs, who are paid just 58 cents for every dollar paid to fathers.

(D) A conservative estimate is that women employed in the United States lose a combined total of nearly $500 billion every year due to the wage gap. These women, their families, businesses and the economy suffer as a result. Lost wages mean families have less money to save for the future or to spend on basic goods and services—spending that helps drive the economy.

(E) Statistical analysis shows that 62 percent of the wage gap can be attributed to occupational and industry differences; differences in experience and education; and factors such as race, region and unionization. That leaves 38
percent of the gap unaccounted for, leading re-
searchers to conclude that factors such as dis-
crimination and unconscious bias continue to
affect women’s wages.

(5) The existence of such wage rate different-
tials—

(A) depresses wages and living standards
for employees necessary for their health and ef-

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

(C) tends to cause labor disputes, thereby
burdening, affecting, and obstructing com-

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

(E) constitutes an unfair method of com-
petition; and

(F) contributes to poor living conditions, poor nutrition, and fewer opportunities for fam-
ilies with children under 18 where the mother
is the sole or primary breadwinner.

(6) Section 6(d) of the Fair Labor Standards
Act of 1938 prohibits discrimination in compensa-
tion for “equal work” on the basis of sex.
(7) Artificial barriers to the elimination of discrimination in compensation based upon sex, race, and national origin continue to exist more than five decades after the passage of section 6(d) of the Fair Labor Standards Act of 1938, the Equal Pay Act of 1963, and the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.). Elimination of such barriers would have positive effects.

(A) Problems in the economy created by discrimination through wage rate differentials would be reduced. In 2012, the U.S. economy would have produced additional income of $447.6 billion if women received equal pay; this represents 2.9 percent of 2012 gross domestic product.

(B) Fewer working women and people of color would earn low wages, thereby reducing dependence on public assistance. The total increase in women’s earnings with pay equity represents more than 14 times what the Federal and State governments spent in fiscal year 2012 on Temporary Assistance to Needy Families.

(C) Working family members earning a fair rate of pay would encourage stable families
and reduce poverty. The poverty rate for all working women would be cut in half, falling to 3.9 percent from 8.1 percent. The very high poverty rate for working single mothers would fall by nearly half, from 28.7 percent to 15.0 percent, and two-thirds would receive a pay increase.

SEC. 3. EQUAL PAY FOR EQUIVALENT JOBS.

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

“(h)(1)(A) Except as provided in subparagraph (B), no employer having employees subject to any provision of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex, race, or national origin by paying wages to employees in such establishment in a job that is dominated by employees of a particular sex, race, or national origin at a rate less than the rate at which the employer pays wages to employees in such establishment in another job that is dominated by employees of the opposite sex or of a different race or national origin, respectively, for work on equivalent jobs, nor shall such employer between such employees on the basis of sex, race, or national origin in any other terms, conditions, privileges, or benefits of employment.
“(B) Nothing in subparagraph (A) shall prohibit the payment of different wage rates to employees where such payment is made pursuant to—

“(i) a seniority system;
“(ii) a merit system;
“(iii) a system that measures earnings by quantity or quality of production; or
“(iv) a differential based on a bona fide factor other than sex, race, or national origin, such as education, training, or experience, except that this clause shall apply only if—

“(I) the employer demonstrates that—
“(aa) such factor—
“(AA) is job-related with respect to the position in question; or
“(BB) furthers a legitimate business purpose, except that this item shall not apply if the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice; and
“(bb) such factor was actually applied and used reasonably in light of the asserted justification; and

“(II) upon the employer succeeding under subclause (I), the employee fails to demonstrate that the differential produced by the reliance of the employer on such factor is itself the result of discrimination on the basis of sex, race, or national origin by the employer.

“(C) The Equal Employment Opportunity Commission shall issue guidelines specifying criteria for determining whether a job is dominated by employees of a particular sex, race, or national origin for purposes of subparagraph (B)(iv). Such guidelines shall not include a list of such jobs.

“(D) An employer who is paying a wage rate differential in violation of subparagraph (A) shall not, in order to comply with the provisions of such subparagraph, reduce the wage rate of any employee.

“(2) No labor organization or its agents representing employees of an employer having employees subject to any provision of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1)(A).
“(3) For purposes of administration and enforcement of this subsection, any amounts owing to any employee that have been withheld in violation of paragraph (1)(A) shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this section or section 7.

“(4) In this subsection:

“(A) The term ‘labor organization’ means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

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

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

SEC. 4. PROHIBITED ACTS.

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

(1) by striking the period at the end of paragraph (5) and inserting a semicolon; and
(2) by adding after paragraph (5) the following:

“(6) to discriminate against any individual be-
cause such individual has opposed any act or prac-
tice made unlawful by section 6(h) or because such
individual made a charge, testified, assisted, or par-
ticipated in any manner in an investigation, pro-
ceeding, or hearing to enforce section 6(h); or

“(7) to discharge or in any other manner dis-
 criminate against, coerce, intimidate, threaten, or
interfere with any employee or any other person be-
cause the employee inquired about, disclosed, com-
pared, or otherwise discussed the employee’s wages
or the wages of any other employee, or because the
employee exercised, enjoyed, aided, or encouraged
any other person to exercise or enjoy any right
 granted or protected by section 6(h).”.

SEC. 5. REMEDIES.

(a) ENHANCED PENALTIES.—Section 16(b) (29
U.S.C. 216(b)) is amended—

(1) by inserting after the first sentence the fol-
lowing: “Any employer who violates subsection (d) or
(h) of section 6 shall additionally be liable for such
compensatory or punitive damages as may be appro-
priate, except that the United States shall not be lia-
ble for punitive damages.”;
(2) in the sentence beginning “An action to”, by striking “either of the preceding sentences” and inserting “any of the preceding sentences of this subsection”;

(3) in the sentence beginning “No employees”, by striking “No employees” and inserting “Except with respect to class actions brought under subsection (f), no employee”;

(4) in the sentence beginning “The court in”, by striking “in such action” and inserting “in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection”; and

(5) by striking “section 15(a)(3)” each place it occurs and inserting “paragraphs (3), (6), and (7) of section 15(a)”.

(b) Action by Secretary.—Section 16(c) (29 U.S.C. 216(c)) is amended—

(1) in the first sentence—

(A) by inserting “or, in the case of a violation of subsection (d) or (h) of section 6, additional compensatory or punitive damages,” before “and the agreement”; and
(B) by inserting before the period the follow-
ing: “, or such compensatory or punitive
damages, as appropriate”; and
(2) in the second sentence, by inserting before
the period the following: “and, in the case of a viola-
tion of subsection (d) or (h) of section 6, additional
compensatory or punitive damages”; and
(3) in the third sentence, by striking “the first
sentence” and inserting “the first or second sen-
tence”.

(c) Fees.—Section 16 (29 U.S.C. 216) is amended
by adding at the end the following:
“(f) In any action brought under this section for a
violation of section 6(h), the court shall, in addition to
any other remedies awarded to the prevailing plaintiff or
plaintiffs, allow expert fees as part of the costs. Any such
action may be maintained as a class action as provided
by the Federal Rules of Civil Procedure.”.

SEC. 6. RECORDS.

(a) Records.—Section 11(c) (29 U.S.C. 211(c)) is
amended—
(1) by inserting “(1)” after “(c)”; and
(2) by adding at the end the following:
“(2) Every employer subject to section 6(h) shall pre-
serve records that document and support the method, sys-

VerDate Sep 11 2014 21:14 Apr 18, 2017 Jkt 069200 PO 00000 Frm 00013 Fmt 6652 Sfmt 6201 E:\BILLS\H2095.IH H2095sradovich on DSK3GMQ082PROD with BILLS
tem, calculations, and other bases used by the employer in establishing, adjusting, and determining the wage rates paid to the employees of the employer. Every employer subject to section 6(h) shall preserve such records for such periods of time, and shall make such reports from the records to the Equal Employment Opportunity Commission, as shall be prescribed by the Equal Employment Opportunity Commission by regulation or order as necessary or appropriate for the enforcement of the provisions of section 6(h) or any regulation promulgated pursuant to section 6(h).”.

(b) Small Business Exemptions.—Section 11(c) (as amended by subsection (a)) is further amended by adding at the end the following:

“(3) Every employer subject to section 6(h) that has 25 or more employees on any date during the first or second year after the effective date of this paragraph, or 15 or more employees on any date during any subsequent year after such second year, shall, in accordance with regulations promulgated by the Equal Employment Opportunity Commission under paragraph (8), prepare and submit to the Equal Employment Opportunity Commission for the year involved a report signed by the president, treasurer, or corresponding principal officer, of the employer that includes information that discloses the wage
rates paid to employees of the employer in each classification, position, or job title, or to employees in other wage groups employed by the employer, including information with respect to the sex, race, and national origin of employees at each wage rate in each classification, position, job title, or other wage group.”.

(c) PROTECTION OF CONFIDENTIALITY.—Section 11(c) (as amended by subsections (a) and (b)) is further amended by adding at the end the following:

“(4) The rules and regulations promulgated by the Equal Employment Opportunity Commission under paragraph (8), relating to the form of such a report, shall include requirements to protect the confidentiality of employees, including a requirement that the report shall not contain the name of any individual employee.”.

(d) USE; INSPECTIONS; EXAMINATION; REGULATIONS.—Section 11(c) (as amended by subsections (a) through (c)) is further amended by adding at the end the following:

“(5) The Equal Employment Opportunity Commission may publish any information and data that the Equal Employment Opportunity Commission obtains pursuant to the provisions of paragraph (3). The Equal Employment Opportunity Commission may use the information and data for statistical and research purposes, and compile
and publish such studies, analyses, reports, and surveys based on the information and data as the Equal Employment Opportunity Commission may consider appropriate.

“(6) In order to carry out the purposes of this Act, the Equal Employment Opportunity Commission shall by regulation make reasonable provision for the inspection and examination by any person of the information and data contained in any report submitted to the Equal Employment Opportunity Commission pursuant to paragraph (3).

“(7) The Equal Employment Opportunity Commission shall by regulation provide for the furnishing of copies of reports submitted to the Equal Employment Opportunity Commission pursuant to paragraph (3) to any person upon payment of a charge based upon the cost of the service.

“(8) The Equal Employment Opportunity Commission shall issue rules and regulations prescribing the form and content of reports required to be submitted under paragraph (3) and such other reasonable rules and regulations as the Equal Employment Opportunity Commission may find necessary to prevent the circumvention or evasion of such reporting requirements. In exercising the authority of the Equal Employment Opportunity Commission under paragraph (3), the Equal Employment Oppor-
tunity Commission may prescribe by general rule sim-
plified reports for employers for whom the Equal Employ-
ment Opportunity Commission finds that because of the 
size of the employers a detailed report would be unduly 
burdensome.”.

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

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

“(4) The Equal Employment Opportunity Commis-
sion shall conduct studies and provide information and 
technical assistance to employers, labor organizations, and 
the general public concerning effective means available to 
implement the provisions of section 6(h) prohibiting wage 
rate discrimination between employees performing work in 
equivalent jobs on the basis of sex, race, or national origin. 
Such studies, information, and technical assistance shall 
be based on and include reference to the objectives of such 
section to eliminate such discrimination. In order to 
achieve the objectives of such section, the Equal Employ-
ment Opportunity Commission shall carry on a continuing 
program of research, education, and technical assistance 
including—

“(A) conducting and promoting research with 
the intent of developing means to expeditiously cor-
rect the wage rate differentials described in section 6(h);

“(B) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the various media of communication, and the general public the findings of studies and other materials for promoting compliance with section 6(h);

“(C) sponsoring and assisting State and community informational and educational programs; and

“(D) providing technical assistance to employers, labor organizations, professional associations and other interested persons on means of achieving and maintaining compliance with the provisions of section 6(h).

“(5) The report submitted biennially by the Secretary to Congress under paragraph (1) shall include a separate evaluation and appraisal regarding the implementation of section 6(h).”.

SEC. 8. CONFORMING AMENDMENTS.

(a) CONGRESSIONAL EMPLOYEES.—

(1) APPLICATION.—Section 203(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1313(a)(1)) is amended—
(A) by striking “subsections (a)(1) and (d) of section 6” and inserting “subsections (a)(1), (d), and (h) of section 6”; and

(B) by striking “206 (a)(1) and (d)” and inserting “206 (a)(1), (d), and (h)”.

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

(b) Executive Branch Employees.—

(1) Application.—Section 413(a)(1) of title 3, United States Code, as added by section 2(a) of the Presidential and Executive Office Accountability Act (Public Law 104–331; 110 Stat. 4053), is amended by striking “subsections (a)(1) and (d) of section 6” and inserting “subsections (a)(1), (d), and (h) of section 6”.

(2) Remedies.—Section 413(b) of such title is amended by inserting before the period the following: “or, in an appropriate case, under section 16(f) of such Act”.

SEC. 9. EFFECTIVE DATE.

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