

MARCH 14, 2019

RULES COMMITTEE PRINT 116-8
TEXT OF H.R. 7, PAYCHECK FAIRNESS ACT

**[Showing the text of H.R. 7 as ordered reported by the
Committee on Education and Labor]**

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Paycheck Fairness
3 Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

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

8 (2) Despite the enactment of the Equal Pay Act
9 of 1963, many women continue to earn significantly
10 lower pay than men for equal work. These pay dis-
11 parities exist in both the private and governmental
12 sectors.

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

1 (4) The existence of such pay disparities—

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

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

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

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

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

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

19 (G) tends to cause labor disputes, as evi-
20 denced by the tens of thousands of charges filed
21 with the Equal Employment Opportunity Com-
22 mission against employers between 2010 and
23 2016;

24 (H) interferes with the orderly and fair
25 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;”;

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

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

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

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

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

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

22 (1) by inserting after the first sentence the fol-
23 lowing: “Any employer who violates section 6(d)
24 shall additionally be liable for such compensatory
25 damages, or, where the employee demonstrates that

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

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

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

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

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

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

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

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

4 (1) in the first sentence—

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

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

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

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

19 (4) in the sixth sentence—

20 (A) by striking “commenced in the case”
21 and inserting “commenced—

22 “(1) in the case”;

23 (B) by striking the period and inserting “;
24 or”; and

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

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

4 **SEC. 4. TRAINING.**

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

11 **SEC. 5. NEGOTIATION SKILLS TRAINING.**

12 (a) PROGRAM AUTHORIZED.—

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

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

23 (3) ELIGIBLE ENTITIES.—To be eligible to re-
24 ceive a grant under this subsection, an entity shall
25 be a public agency, such as a State, a local govern-

1 ment in a metropolitan statistical area (as defined
2 by the Office of Management and Budget), a State
3 educational agency, or a local educational agency, a
4 private nonprofit organization, or a community-
5 based organization.

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

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

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

21 (1) in the case of the Secretary of Education,
22 the Elementary and Secondary Education Act of
23 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins
24 Career and Technical Education Act of 2006 (20
25 U.S.C. 2301 et seq.), the Higher Education Act of

1 1965 (20 U.S.C. 1001 et seq.), and other programs
2 carried out by the Department of Education that the
3 Secretary of Education determines to be appro-
4 priate; and

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

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

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

18 Not later than 18 months after the date of enactment
19 of this Act, and periodically thereafter, the Secretary of
20 Labor shall conduct studies and provide information to
21 employers, labor organizations, and the general public con-
22 cerning the means available to eliminate pay disparities
23 between men and women, including—

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

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

10 (3) sponsoring and assisting State, local, and
11 community informational and educational programs;

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

16 (5) recognizing and promoting the achievements
17 of employers, labor organizations, and professional
18 associations that have worked to eliminate the pay
19 disparities.

20 **SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR**
21 **PAY EQUITY IN THE WORKPLACE.**

22 (a) IN GENERAL.—There is established the Secretary
23 of Labor’s National Award for Pay Equity in the Work-
24 place, which shall be awarded, on an annual basis, to an
25 employer to encourage proactive efforts to comply with

1 section 6(d) of the Fair Labor Standards Act of 1938 (29
2 U.S.C. 206(d)), as amended by this Act.

3 (b) CRITERIA FOR QUALIFICATION.—The Secretary
4 of Labor shall set criteria for receipt of the award, includ-
5 ing a requirement that an employer has made substantial
6 effort to eliminate pay disparities between men and
7 women, and deserves special recognition as a consequence
8 of such effort. The Secretary shall establish procedures for
9 the application and presentation of the award.

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

12 (1)(A) a corporation, including a nonprofit cor-
13 poration;

14 (B) a partnership;

15 (C) a professional association;

16 (D) a labor organization; and

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

19 (2) an entity carrying out an education referral
20 program, a training program, such as an apprentice-
21 ship or management training program, or a similar
22 program; and

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

1 **SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL**
2 **EMPLOYMENT OPPORTUNITY COMMISSION.**

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

6 “(f)(1) Not later than 18 months after the date of
7 enactment of this subsection, the Commission shall issue
8 regulations to provide for the collection from employers
9 of compensation data and other employment-related data
10 (including hiring, termination, and promotion data)
11 disaggregated by the sex, race, and national origin of em-
12 ployees.

13 “(2) In carrying out paragraph (1), the Commission
14 shall have as its primary consideration the most effective
15 and efficient means for enhancing the enforcement of Fed-
16 eral laws prohibiting pay discrimination. For this purpose,
17 the Commission shall consider factors including the im-
18 position of burdens on employers, the frequency of required
19 reports (including the size of employers required to pre-
20 pare reports), appropriate protections for maintaining
21 data confidentiality, and the most effective format to re-
22 port such data.”.

23 **SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**
24 **PAY EQUITY DATA COLLECTION.**

25 (a) BUREAU OF LABOR STATISTICS DATA COLLEC-
26 TION.—The Commissioner of Labor Statistics shall con-

1 tinue to collect data on women workers in the Current
2 Employment Statistics survey.

3 (b) OFFICE OF FEDERAL CONTRACT COMPLIANCE
4 PROGRAMS INITIATIVES.—The Director of the Office of
5 Federal Contract Compliance Programs shall ensure that
6 employees of the Office—

7 (1)(A) shall use the full range of investigatory
8 tools at the Office’s disposal, including pay grade
9 methodology;

10 (B) in considering evidence of possible com-
11 pensation discrimination—

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

14 (ii) shall not limit its evaluation of the evi-
15 dence to a small number of methods of evalu-
16 ating the evidence; and

17 (C) shall not require a multiple regression anal-
18 ysis or anecdotal evidence for a compensation dis-
19 crimination case;

20 (2) for purposes of its investigative, compliance,
21 and enforcement activities, shall define “similarly
22 situated employees” in a way that is consistent with
23 and not more stringent than the definition provided
24 in item 1 of subsection A of section 10–III of the
25 Equal Employment Opportunity Commission Com-

1 compliance Manual (2000), and shall consider only fac-
2 tors that the Office's investigation reveals were used
3 in making compensation decisions; and

4 (3) shall implement a survey to collect com-
5 pensation data and other employment-related data
6 (including hiring, termination, and promotion data)
7 and designate not less than half of all nonconstruc-
8 tion contractor establishments each year to prepare
9 and file such survey, and shall review and utilize the
10 responses to such survey to identify contractor es-
11 tablishments for further evaluation and for other en-
12 forcement purposes as appropriate.

13 (c) DEPARTMENT OF LABOR DISTRIBUTION OF
14 WAGE DISCRIMINATION INFORMATION.—The Secretary of
15 Labor shall make readily available (in print, on the De-
16 partment of Labor website, and through any other forum
17 that the Department may use to distribute compensation
18 discrimination information), accurate information on com-
19 pensation discrimination, including statistics, explanations
20 of employee rights, historical analyses of such discrimina-
21 tion, instructions for employers on compliance, and any
22 other information that will assist the public in under-
23 standing and addressing such discrimination.

1 **SEC. 10. PROHIBITIONS RELATING TO PROSPECTIVE EM-**
2 **PLOYEES' SALARY AND BENEFIT HISTORY.**

3 (a) IN GENERAL.—The Fair Labor Standards Act of
4 1938 (29 U.S.C. 201 et seq.) is amended by inserting
5 after section 7 the following new section:

6 **“SEC. 8. REQUIREMENTS AND PROHIBITIONS RELATING TO**
7 **WAGE, SALARY, AND BENEFIT HISTORY.**

8 “(a) IN GENERAL.—It shall be an unlawful practice
9 for an employer to—

10 “(1) rely on the wage history of a prospective
11 employee in considering the prospective employee for
12 employment, including requiring that a prospective
13 employee’s prior wages satisfy minimum or max-
14 imum criteria as a condition of being considered for
15 employment;

16 “(2) rely on the wage history of a prospective
17 employee in determining the wages for such prospec-
18 tive employee, except that an employer may rely on
19 wage history if it is voluntarily provided by a pro-
20 spective employee, after the employer makes an offer
21 of employment with an offer of compensation to the
22 prospective employee, to support a wage higher than
23 the wage offered by the employer;

24 “(3) seek from a prospective employee or any
25 current or former employer the wage history of the
26 prospective employee, except that an employer may

1 seek to confirm prior wage information only after an
2 offer of employment with compensation has been
3 made to the prospective employee and the prospec-
4 tive employee responds to the offer by providing
5 prior wage information to support a wage higher
6 than that offered by the employer; or

7 “(4) discharge or in any other manner retaliate
8 against any employee or prospective employee be-
9 cause the employee or prospective employee—

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

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

14 “(b) DEFINITION.—In this section, the term ‘wage
15 history’ means the wages paid to the prospective employee
16 by the prospective employee’s current employer or previous
17 employer.”.

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

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

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

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

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

11 “(A) the employees or prospective employees;

12 and

13 “(B) other employees or prospective employees
14 similarly situated.”.

15 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

16 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
17 are authorized to be appropriated such sums as may be
18 necessary to carry out this Act.

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

1 **SEC. 12. SMALL BUSINESS ASSISTANCE.**

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

5 (b) **TECHNICAL ASSISTANCE MATERIALS.**—The Sec-
6 retary of Labor and the Commissioner of the Equal Em-
7 ployment Opportunity Commission shall jointly develop
8 technical assistance material to assist small enterprises in
9 complying with the requirements of this Act and the
10 amendments made by this Act.

11 (c) **SMALL BUSINESSES.**—A small enterprise shall be
12 exempt from the provisions of this Act, and the amend-
13 ments made by this Act, to the same extent that such en-
14 terprise is exempt from the requirements of the Fair
15 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) pur-
16 suant to clauses (i) and (ii) of section 3(s)(1)(A) of such
17 Act (29 U.S.C. 203(s)(1)(A)).

18 **SEC. 13. RULE OF CONSTRUCTION.**

19 Nothing in this Act, or in any amendments made by
20 this Act, shall affect the obligation of employers and em-
21 ployees to fully comply with all applicable immigration
22 laws, including being subject to any penalties, fines, or
23 other sanctions.

24 **SEC. 14. SEVERABILITY.**

25 If any provision of this Act, an amendment made by
26 this Act, or the application of that provision or amend-

1 ment to particular persons or circumstances is held invalid
2 or found to be unconstitutional, the remainder of this Act,
3 the amendments made by this Act, or the application of
4 that provision to other persons or circumstances shall not
5 be affected.

