

117TH CONGRESS
1ST SESSION

H. R. 2491

To amend the Fair Labor Standards Act of 1938 to enhance provisions related to wage discrimination, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2021

Ms. STEFANIK (for herself, Ms. FOXX, Mrs. MILLER-MEEKS, Mr. MCKINLEY, Mr. LATTA, Mr. BUCSHON, Mr. DIAZ-BALART, Mr. BOST, Mr. BACON, Mr. THOMPSON of Pennsylvania, Mrs. WALORSKI, Mr. GARBARINO, Mr. STAUBER, Mr. ZELDIN, Mrs. RODGERS of Washington, Mr. AUSTIN SCOTT of Georgia, Mr. BURGESS, Mr. NEWHOUSE, Mr. MANN, Mr. WITTMAN, Mr. KINZINGER, Mr. OWENS, Ms. MALLIOTAKIS, Mr. COLE, Mr. GRAVES of Louisiana, Mr. WOMACK, Ms. GRANGER, Ms. HERRERA BEUTLER, Mr. GONZALEZ of Ohio, Mr. MOORE of Utah, Mr. MEUSER, Mr. JOYCE of Ohio, Mr. CAWTHORN, Mr. FORTENBERRY, Mr. GUTHRIE, Mrs. SPARTZ, Mr. ALLEN, Mr. CURTIS, Mr. RODNEY DAVIS of Illinois, and Mr. AMODEI) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Fair Labor Standards Act of 1938 to enhance provisions related to wage discrimination, 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 referred to as the “Wage Equity
5 Act of 2021”.

1 **SEC. 2. FINDINGS.**

2 (1) In 1963, Congress passed on a bipartisan
3 basis the Equal Pay Act of 1963 to prohibit dis-
4 crimination on account of sex in the payment of
5 wages for equal work performed by employees for
6 employers engaged in commerce or in the production
7 of goods for commerce.

8 (2) Following the passage of such Act, in 1964,
9 Congress passed on a bipartisan basis the Civil
10 Rights Act of 1964. Since the passage of both the
11 Equal Pay Act of 1963 and the Civil Rights Act of
12 1964, women have made significant strides, both in
13 the workforce and in their educational pursuits.

14 (3) Prior to the COVID–19 pandemic, there
15 were over 77,000,000 women in the workforce, the
16 most in American history. Of the 2,000,000 jobs
17 created in 2019, 53 percent went to women. This
18 follows a trend that has been rising for some time.
19 Women are graduating from college at a higher rate
20 than their male counter parts, making up 61 percent
21 of all college degrees conferred in 2018. Additionally,
22 according to a recent survey of working women,
23 more than half are their family’s primary bread-
24 winner.

25 (4) The COVID–19 pandemic has had a signifi-
26 cant impact on working women, resulting in over 2

1 million women leaving the workforce since February
2 2020.

3 (5) Despite these advances there is still concern
4 among the American public that gender-based wage
5 discrimination has not been eliminated.

6 **SEC. 3. CLARIFYING SEX-BASED DISCRIMINATION PROHIBI-**
7 **TION.**

8 Section 6(d)(1) of the Fair Labor Standards Act of
9 1938 (29 U.S.C. 206(d)(1)) is amended by inserting
10 “bona fide business-related” after “any other”.

11 **SEC. 4. JOB AND WAGE ANALYSIS.**

12 Section 16 of the Fair Labor Standards Act of 1938
13 (29 U.S.C. 216) is amended by adding at the end the fol-
14 lowing:

15 “(f)(1) An employer shall not be liable in an action
16 brought against the employer for a violation of section
17 6(d) if—

18 “(A) during the period beginning on the date that
19 is 3 years before the date on which the action is brought
20 and ending on the date that is 1 day before the date on
21 which the action is brought, such employer completes a
22 job and wage analysis audit to determine whether there
23 are differentials in wage rates among such employees that
24 may violate section 6(d);

1 “(B) such employer takes reasonable steps to remedy
2 any such differentials;

3 “(C) such job and wage analysis audit is conducted
4 and such reasonable steps are taken in good faith to inves-
5 tigate whether any such differentials exist; and

6 “(D) such audit is reasonable in detail and scope with
7 respect to the size of the employer.

8 “(2) A job and wage analysis audit under this section
9 and remedial action taken in response to the findings of
10 such audit—

11 “(A) may only be admissible by the employer
12 for the purposes of showing—

13 “(i) such audit was conducted; and

14 “(ii) such reasonable steps were taken; and

15 “(B) shall not be discoverable or admissible for
16 any other purpose in any claim against the em-
17 ployer.

18 “(3) An employer who has not completed a job and
19 wage analysis audit under this subsection shall not be sub-
20 ject to a negative or adverse inference as a result of not
21 having completed such audit.

22 “(4) An employer who has completed a job and wage
23 analysis audit that does not meet the requirements of sub-
24 paragraph (D) of paragraph (1) but otherwise meets the

1 requirements of such paragraph shall not be liable for liq-
2 uidated damages under section 16(b).

3 “(5) In this section—

4 “(A) the term ‘job and wage analysis audit’
5 means an audit conducted by the employer for the
6 purpose of identifying wage disparities among em-
7 ployees on the basis of sex; and

8 “(B) the term ‘reasonable steps’, with respect
9 to differentials in wages among employees that may
10 violate section 6(d), means steps that are reasonable
11 to address such differentials taking into account—

12 “(i) the amount of time that has passed
13 since the date on which the audit was initiated;

14 “(ii) the nature and degree of progress re-
15 sulting from such reasonable steps toward com-
16 pliance with section 6(d) compared to the num-
17 ber of employees with respect to whom a viola-
18 tion may exist and the amount of the wage rate
19 differentials among such employees; and

20 “(iii) the size and resources of the em-
21 ployer.”.

22 **SEC. 5. WAGE HISTORY; DISCUSSION OF WAGES.**

23 (a) IN GENERAL.—The Fair Labor Standards Act of
24 1938 (29 U.S.C. 201 et seq.) is amended by inserting
25 after section 7 the following new section:

1 **“SEC. 8. PROVISIONS RELATING TO WAGE HISTORY AND**
2 **DISCUSSION OF WAGE.**

3 “(a) **REQUIREMENTS AND PROHIBITIONS RELATING**
4 **TO WAGE HISTORY.**—It shall be an unlawful practice for
5 a person after the date of enactment of the Wage Equity
6 Act of 2021—

7 “(1) to rely on the wage history of a prospective
8 employee—

9 “(A) in considering the prospective em-
10 ployee for employment, including by requiring
11 that the wage history of a prospective employee
12 satisfies minimum or maximum criteria as a
13 condition of being considered for employment;
14 or

15 “(B) in determining the rate of wage for
16 such prospective employee; or

17 “(2) to seek, or to require a prospective em-
18 ployee to disclose, the wage history of such prospec-
19 tive employee.

20 “(b) **VOLUNTARY DISCLOSURE EXCEPTIONS.**—

21 “(1) **IN GENERAL.**—Subsection (a)(1) shall not
22 apply with respect to a prospective employee who
23 voluntarily discloses the wage history of such pro-
24 spective employee.

25 “(2) **WAGE HISTORY VERIFICATION.**—Notwith-
26 standing subsection (a)(2), a person may take ac-

1 tions necessary to verify the wage history of a pro-
2 spective employee if such wage history is voluntarily
3 disclosed to the person by such prospective em-
4 ployee.

5 “(c) PRIOR INQUIRIES.—Subsection (a) shall not
6 apply with respect to the wage history of an employee ac-
7 quired by an employer before the date of enactment of
8 the Wage Equity Act of 2021, including a current employ-
9 ee’s wage history with another employer that was re-
10 requested and used to set an employee’s starting wage be-
11 fore such date and which is embedded in an employee’s
12 pay and pay increases after such date.

13 “(d) PROHIBITIONS RELATING TO DISCUSSION OF
14 WAGES.—Subject to subsection (c), it shall be an unlawful
15 practice for an employer—

16 “(1) to prohibit an employee from inquiring
17 about, discussing, or disclosing the wage of—

18 “(A) the employee; or

19 “(B) any other employee of the employer if
20 such employee has voluntarily disclosed the
21 wage of such employee;

22 “(2) to prohibit an employee from requesting
23 from the employer an explanation of differentials in
24 compensation among employees; or

1 “(3) to take an adverse employment action
2 against an employee for—

3 “(A) conduct described under paragraphs
4 (1) or (2); or

5 “(B) encouraging employees to engage in
6 conduct described in such paragraphs.

7 “(e) LIMITATIONS RELATING TO DISCUSSION OF
8 WAGES.—

9 “(1) TIME AND PLACE LIMITATIONS.—An em-
10 ployer may impose reasonable time, place, and man-
11 ner limitations on conduct described under sub-
12 section (c) if such limitations are written and avail-
13 able to each employee.

14 “(2) INVOLUNTARY DISCLOSURE.—An employer
15 may prohibit an employee from discussing the wages
16 of any other employee if such other employee did not
17 voluntarily disclose such wages to the employee dis-
18 cussing such wages.

19 “(f) PAY EXPECTATION CONVERSATION.—Nothing
20 in this section shall be construed to prevent a person
21 from—

22 “(1) inquiring about the pay expectations of a
23 prospective employee; or

1 “(2) providing information to such employee
2 about the compensation and benefits offered in rela-
3 tion to the position.”.

4 (b) DEFINITIONS.—Section 2 of the Fair Labor
5 Standards Act of 1938 (29 U.S.C. 202) is amended by
6 adding at the end the following:

7 “(z) the term ‘prospective employee’ means an indi-
8 vidual who took an affirmative step to seek employment
9 with a person and who is not currently employed by such
10 person, a parent, subsidiary, predecessor, or related com-
11 pany of such person, or an employer connected by a pur-
12 chase agreement with such person; and

13 “(aa) the term ‘wage history’ means the wages paid
14 to the prospective employee by the prospective employee’s
15 current employer or any previous employer of such em-
16 ployee.”.

17 (c) RETALIATION.—Section 15(a)(3) of the Fair
18 Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is
19 amended—

20 (1) by inserting “or prospective employee” after
21 “any employee”; and

22 (2) by inserting “or prospective employee” after
23 “such employee”.

24 (d) PENALTY.—

1 (1) IN GENERAL.—Section 16(b) of the Fair
2 Labor Standards Act of 1938 (29 U.S.C. 216(b)) is
3 amended by inserting “Any person who violates the
4 provisions of section 8 with respect to an employee
5 or prospective employee shall be liable to such em-
6 ployee in an amount equal to the difference between
7 the amount that the employee or prospective em-
8 ployee would have received but for such violation
9 and the amount received by such employee or pro-
10 spective employee, and an additional equal amount
11 as liquidated damages.” after “tips unlawfully kept
12 by the employer, and in an additional equal amount
13 as liquidated damages.”.

14 (2) CIVIL MONETARY PENALTY.—Section
15 16(e)(2) of the Fair Labor Standards Act of 1938
16 (29 U.S.C. 216(e)(2)) is amended by striking “6
17 and 7” and inserting “6, 7, and 8”.

18 **SEC. 6. NEGOTIATION SKILLS EDUCATION.**

19 (a) PROGRAM AUTHORIZED.—

20 (1) IN GENERAL.—The Secretary of Labor,
21 after consultation with the Secretary of Education,
22 is authorized to establish and carry out a grant pro-
23 gram.

24 (2) GRANTS.—In carrying out the program
25 under paragraph (1), the Secretary of Labor may

1 make grants on a competitive basis to eligible enti-
2 ties to carry out negotiation skills education pro-
3 grams for the purposes of addressing wage dispari-
4 ties, including through outreach to women and girls.

5 (3) ELIGIBLE ENTITIES.—To be eligible to re-
6 ceive a grant under this subsection, an entity shall
7 be a public agency, such as a State, a local govern-
8 ment in a metropolitan statistical area (as defined
9 by the Office of Management and Budget), a State
10 educational agency, or a local educational agency, a
11 private nonprofit organization, or a community-
12 based organization.

13 (4) APPLICATION.—To be eligible to receive a
14 grant under this subsection, an entity shall submit
15 an application to the Secretary of Labor at such
16 time, in such manner, and containing such informa-
17 tion as the Secretary of Labor may require.

18 (5) USE OF FUNDS.—An entity that receives a
19 grant under this subsection shall use the funds made
20 available through the grant to carry out an effective
21 negotiation skills education program for the pur-
22 poses described in paragraph (2).

23 (b) INCORPORATING EDUCATION INTO EXISTING
24 PROGRAMS.—The Secretary of Labor and the Secretary
25 of Education shall issue regulations or policy guidance

1 that provides for integrating the negotiation skills edu-
2 cation, to the extent practicable, into programs authorized
3 under—

4 (1) in the case of the Secretary of Education,
5 the Elementary and Secondary Education Act of
6 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins
7 Career and Technical Education Act of 2006 (20
8 U.S.C. 2301 et seq.), the Higher Education Act of
9 1965 (20 U.S.C. 1001 et seq.), and other programs
10 carried out by the Department of Education that the
11 Secretary of Education determines to be appro-
12 priate; and

13 (2) in the case of the Secretary of Labor, the
14 Workforce Innovation and Opportunity Act (29
15 U.S.C. 3101 et seq.), and other programs carried
16 out by the Department of Labor that the Secretary
17 of Labor determines to be appropriate.

18 (c) REPORT.—Not later than 18 months after the
19 date of enactment of this Act, and annually thereafter,
20 the Secretary of Labor, in consultation with the Secretary
21 of Education, shall prepare and submit to Congress a re-
22 port describing the activities conducted under this section
23 and evaluating the effectiveness of such activities in
24 achieving the purposes of this section.

1 **SEC. 7. GAO STUDY.**

2 The Comptroller General shall, not later than 180
3 days after the date of the enactment of this Act, submit
4 to Congress a study on the causes and effects of—

5 (1) wage disparities among men and women;

6 (2) with respect to employees that leave the
7 workforce for parental reasons (commonly referred
8 to as the “Manager’s Gap”), the impact on wages
9 and opportunity potential; and

10 (3) the disparities in negotiation skills among
11 men and women upon entering the workforce.

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