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H.R.1619 - Paycheck Fairness Act

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Sponsor: [Rep. DeLauro, Rosa L. \[D-CT-3\]](#) (Introduced 03/25/2015)

Committees: House - Education and the Workforce

Latest Action: 03/25/2015 Referred to the House Committee on Education and the Workforce.

Tracker:

Introduced	Passed House	Passed Senate	To President
	Became Law		

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Subject — Policy Area:

Labor and Employment

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Text: H.R.1619 — 114th Congress (2015-2016)

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Introduced in House (03/25/2015)

114TH CONGRESS
1ST SESSION

H. R. 1619

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 HOUSE OF REPRESENTATIVES

MARCH 25, 2015

Ms. DELAURO (for herself, Ms. PELOSI, Ms. MATSUI, Ms. FRANKEL of Florida, Ms. ADAMS, Mr. AGUILAR, Mr. YARMUTH, Ms. BASS, Mrs. BEATTY, Mr. BECERRA, Mr. BEYER, Ms. WILSON of Florida, Mr. BISHOP of Georgia, Mrs. WATSON COLEMAN, Ms. BONAMICI, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BRADY of Pennsylvania, BROWN of Florida, Ms. BROWNLEY of California, Mrs. BUSTOS, Ms. MAXINE WATERS of California, Mrs. CAPP, Mr. CAPUANO, Ms. WASSERMAN SCHULTZ, Mr. CARNEY, Mr. CARSON of Indiana, Mr. WALZ, Ms. CASTOR of Florida, Mr. CASTRO of Texas, Ms. CHU of California, Mr. CICILLINE, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Ms. VELÁZQUEZ, Mr. CLEAVER, Mr. CLYBURN, Mr. VEASEY, Mr. CONNOLLY, Mr. CONYERS, Mr. COOPER, Mr. COSTA, Mr. COURTNEY, Mr. CROWLEY, Mr. CUELLAR, Mr. CUMMINGS, Mr. VARGAS, Mrs. DAVIS of California, Mr. DEFAZIO, Ms. DEGETTE, Mr. VAN HOLLEN, Ms. DELBENE, Mr. DESAULNIER, Mr. DEUTCH, Mrs. DINGELL, Mr. DOGGETT, Mr. MICHAEL F. DOYLE of Pennsylvania, Ms. DUCKWORTH, Ms. EDWARDS, Mr. ELLISON, Mr. ENGEL, Mr. ESHOO, Ms. ESTY, Mr. FARR, Ms. TSONGAS, Mr. FOSTER, Ms. FUDGE, Mrs. TORRES, Mr. GALLEGOS, Mr. GARAMI, Ms. GRAHAM, Mr. TONKO, Ms. TITUS, Mr. THOMPSON of California, Mr. GRIJALVA, Mr. GUTIÉRREZ, Ms. HAHN, HASTINGS, Mr. HECK of Washington, Mr. HIGGINS, Mr. HIMES, Mr. HINOJOSA, Mr. HONDA, Mr. HOYER, Mr. HUFFMAN, Mr. ISRAEL, Ms. JACKSON LEE, Mr. JEFFRIES, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JOHNSON of Georgia, Ms. KAPTUR, Mr. KEATING, Ms. KELLY of Illinois, Mr. KENNEDY, Mr. KILDEE, Mr. KILMER, Mr. KINE, Mrs. KIRKPATRICK, Ms. KUSTER, Mr. LANGEVIN, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mrs. LAWRENCE, Ms. LEE, Mr. LEVIN, Mr. LEWIS, Mr. TED LIEU of California, Mr. TAKANO, Mr. LOEBSACK, Ms. LOFGREN, Mr. LOWENTHAL, Mrs. LOWEY, Mr. BEN RAY LUJÁN of New Mexico, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. LYNCH, Mrs. CAROLYN B. MALONEY of New York, Mr. SEAN PATRICK MALONEY of New York, Ms. MCCOLLUM, Mr. McDERMOTT, Mr. MCGOVERN, Mr. McNERNEY, Mr. MEEKS, Ms. MENG, Ms. MOORE, Mr. MOULTON, Mr. TAKAI, Mr. NADLER, Mrs. NAPOLITANO, Mr. SWALWELL of California, Mr. NOLAN, Mr. NORCROSS, Ms. NORTON, Ms. SPEIER, Mr. PALLONE, Mr. PASCRELL, Mr. PAYNE, Mr. SMITH of Washington, Mr. PETERS, Mr. PETERSON, Ms. PINGREE, Ms. PLASKETT, Mr. POCAN, Mr. POLIS, Mr. PRICE of North Carolina, Mr. QUIGLEY, Mr. RANGEL, Miss Rice of New York, Ms. SLAUGHTER, Ms. ROYBAL-ALLARD, Ms. SINEMA, Mr. SHERMAN, Ms. SEWELL of Alabama, Mr. RYAN of Ohio, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SARBANES, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCHRADER, Mr. DAVID SCOTT of Georgia, Mr. SCOTT of Virginia, Mr. SERRANO, Mr. FATTAH, Mr. BLUMENAUER, Mr. ASHFORD, Mr. BERA, Mr. CARTWRIGHT, Mr. DELANEY, Ms. GABBARD, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. PERLMUTTER, Mr. SIRES, Mr. MURPHY of Florida, Mr. BUTTERFIELD, Mr. CÁRDENAS, Mr. COHEN, Mr. DANNY K. DAVIS of Illinois, Mr. GRAYSON, Mr. NEASE, Mr. RICHMOND, Mr. RUIZ, Mr. RUPPERSBERGER, Mr. RUSH, Mr. THOMPSON of Mississippi, and Mr. VELA) 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 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 “Paycheck Fairness Act”.

SEC. 2. FINDINGS.

Congress finds the following:

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

(2) Despite the enactment of the Equal Pay Act in 1963, many women continue to earn significantly lower pay than men for equal work. These pay disparities exist in both the private and governmental sectors. In many instances, the pay disparities can only be due to continued intentional discrimination or the lingering effects of past discrimination.

(3) The existence of such pay disparities—

(A) depresses the wages of working families who rely on the wages of all members of the family to make ends meet;

(B) undermines women's retirement security, which is often based on earnings while in the workforce;

(C) prevents the optimum utilization of available labor resources;

(D) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of the several States;

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

(F) constitutes an unfair method of competition in commerce;

(G) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce;

(H) interferes with the orderly and fair marketing of goods in commerce; and

(I) in many instances, may deprive workers of equal protection on the basis of sex in violation of the 5th and 14th Amendments.

(4)(A) Artificial barriers to the elimination of discrimination in the payment of wages on the basis of sex continue to exist decades after the enactment of the Fair Labor Standards Act of 1938 ([29 U.S.C. 201 et seq.](#)) and the Civil Rights Act of 1964 ([42 U.S.C. 2000a et seq.](#)).

(B) These barriers have resulted, in significant part, because the Equal Pay Act has not worked as Congress originally intended. Improvements and modifications to the law are necessary to ensure that the Act provides effective protection to those subject to pay discrimination on the basis of their sex

(C) Elimination of such barriers would have positive effects, including—

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

(ii) substantially reducing the number of working women earning unfairly low wages, thereby reducing the dependence on public assistance;

(iii) promoting stable families by enabling all family members to earn a fair rate of pay;

(iv) remedying the effects of past discrimination on the basis of sex and ensuring that in the future workers are afforded equal protection on the basis of sex; and

(v) ensuring equal protection pursuant to Congress' power to enforce the 5th and 14th Amendments.

(5) The Department of Labor and the Equal Employment Opportunity Commission have important and unique responsibilities to help ensure that women receive equal pay for equal work.

(6) The Department of Labor is responsible for—

(A) collecting and making publicly available information about women's pay;

(B) ensuring that companies receiving Federal contracts comply with anti-discrimination affirmative action requirements of Executive Order 11246 (relating to equal employment opportunity);

(C) disseminating information about women's rights in the workplace;

(D) helping women who have been victims of pay discrimination obtain a remedy; and

(E) being proactive in investigating and prosecuting equal pay violations, especially systemic violations, and in enforcing all of its mandates.

(7) The Equal Employment Opportunity Commission is the primary enforcement agency for claims made under the Equal Pay Act, and issues regulations and guidance on appropriate interpretations of the law.

(8) With a stronger commitment by the Department of Labor and the Equal Employment Opportunity Commission to their responsibilities, increased information as a result of the amendments made by this Act to the Equal Pay Act of 1963, wage data, and more effective remedies, women will be better able to recognize and enforce their rights.

(9) Certain employers have already made great strides in eradicating unfair pay disparities in the workplace and their achievements should be recognized.

SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS.

(a) **BONA FIDE FACTOR DEFENSE AND MODIFICATION OF SAME ESTABLISHMENT REQUIREMENT.**—Section 6(d)(1) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 206\(d\)\(1\)](#)) is amended—

(1) by striking “No employer having” and inserting “(A) No employer having”;

(2) by striking “any other factor other than sex” and inserting “a bona fide factor other than sex such as education, training, or experience”; and

(3) by inserting at the end the following:

“(B) The bona fide factor defense described in subparagraph (A)(iv) shall apply only if the employee demonstrates that such factor (i) is not based upon or derived from a sex-based differential in compensation; (ii) is job-related with respect to the position in question; (iii) is consistent with business necessity; and (iv) accounts for the entire differential in compensation at issue. Such defense shall not apply where 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.

“(C) For purposes of subparagraph (A), employees shall be deemed to work in the same establishment if the employees work for the same employer at workplaces located in the same county or similar political subdivision of a State. The preceding sentence shall not be construed as limiting broader applications of the term ‘establishment’ consistent with rules prescribed or guidance issued by the Equal Employment Opportunity Commission.”

(b) **NONRETALIATION PROVISION.**—Section 15 of the Fair Labor Standards Act of 1938 ([29 U.S.C. 215\(3\)](#)) is amended—

(1) in subsection (a)—

(A) in paragraph (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;”;

(B) in paragraph (5), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(6) to require an employee to sign a contract or waiver that would prohibit the employee from disclosing information about the employee’s wages.”; and

(2) by adding at the end the following:

“(c) Subsection (a)(3)(B) shall not apply to instances 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 such other employees to individuals who do not otherwise have access to such information, and such disclosure is in response to a complaint or charge or in furtherance of an investigation, proceeding, hearing, or action under section 6(d), including an investigation conducted by the employer. Nothing in subsection shall be construed to limit the rights of an employee provided under any other provision of law.”.

(c) ENHANCED PENALTIES.—Section 16(b) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 216\(b\)](#)) amended—

(1) by inserting after the first sentence the following: “Any employer who violates section 6(d) shall additionally be liable for such compensatory damages, or, where the employee demonstrates that the employer acted with malice or reckless indifference, punitive damages as may be appropriate, except that the United States shall not be liable 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 shall”, by striking “No employees” and inserting “Except with respect to class actions brought to enforce section 6(d), no employee”;

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

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

(A) 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

(B) by inserting before the period the following: “, including expert fees”.

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

(1) in the first sentence—

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

(B) by inserting before the period the following: “, or such compensatory or punitive damages, as appropriate”;

(2) in the second sentence, by inserting before the period the following: “and, in the case of a violation of section 6(d), additional compensatory or punitive damages, as described in subsection (b)”;

(3) in the third sentence, by striking “the first sentence” and inserting “the first or second sentence”; and

(4) in the last sentence—

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

“(1) in the case”;

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

(C) by adding at the end the following:

“(2) in the case of a class action brought to enforce section 6(d), on the date on which the individual becomes a party plaintiff to the class action.”.

SEC. 4. TRAINING.

The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, subject to the availability of funds appropriated under section 10, shall provide training to Commission employees and affected individuals and entities on matters involving discrimination in the payment of wages.

SEC. 5. NEGOTIATION SKILLS TRAINING FOR GIRLS AND WOMEN.

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Labor, after consultation with the Secretary of Education, is authorized to establish and carry out a grant program.

(2) GRANTS.—In carrying out the program, the Secretary of Labor may make grants on a competitive basis to eligible entities, to carry out negotiation skills training programs for girls and women.

(3) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this subsection, an entity shall be a public agency, such as a State, a local government in a metropolitan statistical area (as defined by the Office of Management and Budget), a State educational agency, or a local educational agency, a private nonprofit organization, or a community-based organization.

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

(5) USE OF FUNDS.—An entity that receives a grant under this subsection shall use the funds made available through the grant to carry out an effective negotiation skills training program that empowers girls and women. The training provided through the program shall help girls and women strengthen their negotiation skills to allow the girls and women to obtain higher salaries and rates of compensation that are equal to those paid to similarly situated male employees.

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

(1) in the case of the Secretary of Education, the Elementary and Secondary Education Act of 1965 ([20 U.S.C. 6301 et seq.](#)), the Carl D. Perkins Career and Technical Education Act of 2006 ([20 U.S.C. 2301 et seq.](#)), the Higher Education Act of 1965 ([20 U.S.C. 1001 et seq.](#)), and other programs

carried out by the Department of Education that the Secretary of Education determines to be appropriate; and

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

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Labor and the Secretary of Education shall prepare and submit to Congress a report describing the activities conducted under this section and evaluating the effectiveness of such activities in achieving the purposes of this Act.

SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.

The Secretary of Labor shall conduct studies and provide information to employers, labor organizations, and the general public concerning the means available to eliminate pay disparities between men and women, including—

(1) conducting and promoting research to develop the means to correct expeditiously the conditions leading to the pay disparities;

(2) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the media, and the general public the findings resulting from studies and other materials, relating to eliminating the pay disparities;

(3) sponsoring and assisting State and community informational and educational programs;

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

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

(6) convening a national summit to discuss, and consider approaches for rectifying, the pay disparities.

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

(a) **IN GENERAL.**—There is established the Secretary of Labor’s National Award for Pay Equity in the Workplace, which shall be awarded, as appropriate, to encourage proactive efforts to comply with section 6(d) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 206\(d\)](#)).

(b) **CRITERIA FOR QUALIFICATION.**—The Secretary of Labor shall set criteria for receipt of the award, including a requirement that an employer has made substantial effort to eliminate pay disparities between men and women, and deserves special recognition as a consequence of such effort. The Secretary shall establish procedures for the application and presentation of the award.

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

(1)(A) a corporation, including a nonprofit corporation;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in any of subparagraphs (A) through (D);

(2) an entity carrying out an education referral program, a training program, such as an apprenticeship or management training program, or a similar program; and

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

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

Section 709 of the Civil Rights Act of 1964 ([42 U.S.C. 2000e–8](#)) is amended by adding at the end the following:

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

“(2) In carrying out paragraph (1), the Commission shall have as its primary consideration the most effective and efficient means for enhancing the enforcement of Federal laws prohibiting pay discrimination. For this purpose, the Commission shall consider factors including the imposition of burdens on employers.

the frequency of required reports (including which employers should be required to prepare reports), appropriate protections for maintaining data confidentiality, and the most effective format for reports containing such data.”.

SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND PAY EQUITY DATA COLLECTION.

(a) **BUREAU OF LABOR STATISTICS DATA COLLECTION.**—The Commissioner of Labor Statistics shall continue to collect data on women workers in the Current Employment Statistics survey.

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

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

(B) in considering evidence of possible compensation discrimination—

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

(ii) shall not limit its evaluation of the evidence to a small number of methods of evaluating the evidence; and

(C) shall not require a multiple regression analysis or anecdotal evidence for a compensation discrimination case;

(2) for purposes of its investigative, compliance, and enforcement activities, shall define “similarly situated employees” in a way that is consistent with and not more stringent than the definition provided in item 1 of subsection A of section 10–III of the Equal Employment Opportunity Commission Compliance Manual (2000), and shall consider only factors that the Office's investigation reveals were used in making compensation decisions; and

(3) shall implement a survey to collect compensation data and other employment-related data (including hiring, termination, and promotion data) and designate not less than half of all nonconstruction contractor establishments each year to prepare and file such survey, and shall review and utilize the responses to such survey to identify contractor establishments for further evaluation for other enforcement purposes as appropriate.

(c) **DEPARTMENT OF LABOR DISTRIBUTION OF WAGE DISCRIMINATION INFORMATION.**—The Secretary of Labor shall make readily available (in print, on the Department of Labor website, and through any other forum that the Department may use to distribute compensation discrimination information), accurate

information on compensation discrimination, including statistics, explanations of employee rights, historical analyses of such discrimination, instructions for employers on compliance, and any other information that will assist the public in understanding and addressing such discrimination.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$15,000,000 to carry out this Act.

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

SEC. 11. 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 Commissioner of the Equal Employment Opportunity Commission shall jointly develop technical assistance material 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 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. 12. RULE OF CONSTRUCTION.

Nothing in this Act, or in any amendments 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.