



Section-by-Section

COMMITTEE ON EDUCATION & LABOR

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The Hon. Robert C. "Bobby" Scott • Chairman

The Paycheck Fairness Act (H.R. 7)

Section 1. Short Title. *The Paycheck Fairness Act (the Act)*

Section 2. Findings.

This section states that despite the enactment of the EPA, gender based-pay disparity still exists and some of the disparity is due to gender-based pay discrimination. Such disparity depresses wages of working families, undermines women's retirement security, negatively impacts commerce and the free flow of goods in commerce, and may deprive workers of equal protection on the basis of sex in violation of the 5th and 14th Amendments to the U.S. Constitution.

Decades after enactment of the FLSA and the *Civil Rights Act of 1964*, barriers to the elimination of sex-based wage discrimination still exist. The EPA has not worked as Congress originally intended, and modifications to the EPA are necessary to ensure protections to those who are subject to gender-based wage discrimination. Elimination of such barriers would solve problems in the economy created by such wage disparity, reduce dependence on public assistance, promote stable families, remedy the effects of past discrimination, and ensure equal protection under the 5th and 14th Amendments.

The Department of Labor and the EEOC have important and unique responsibilities to help ensure that women receive equal pay for equal work. With a stronger commitment by these entities, increased information as a result of the Amendments this Act makes to the EPA, wage data, and more effective remedies, women will be better able to recognize and enforce their rights.

Section 3. Enhanced Enforcement of Equal Pay Requirements.

Bona Fide Factor Defense and Modification of Same Establishment Requirement. The Act amends the EPA by defining the statute's "any factor other than sex" employer affirmative defense as requiring employers to provide non-gender, business reasons for the difference in wages. The amended language lays out the requirement that to successfully raise this affirmative defense, an employer must demonstrate that the wage disparity is based on a bona fide factor other than sex, such as education, training, or experience. The differential must be: (1) not based upon or derived from a sex-based differential in compensation; (2) related to the position in question; (3) consistent with business necessity; and (4) fully accounted for in the compensation at issue. Such defense shall not apply if the employee can then demonstrate that her employer has an alternative employment practice that would serve the same business purpose without producing the pay differential, and the employer refused to adopt the alternative practice.

The Act broadens the definition of "establishment" used to compare compensation with the compensation of an employee of the opposite gender who performs substantially equal work. Under the Act, an establishment now includes workplaces located in the same county or similar political subdivision of a state. In addition, the Act allows broader applications of the term "establishment" as long as they are consistent with EEOC.

Nonretaliation Provision. The Act protects employees from retaliation for seeking redress, inquiring about an employer's wage practices, or disclosing their own wages to coworkers. The Act provides that employers are prohibited from retaliating against employees who have made a charge, filed any complaint, or instituted any investigation, proceeding, hearing, or action under the EPA. Employers are also prohibited from requiring an employee to sign a contract or waiver that would prohibit the employee from disclosing their wages. Employees are protected from retaliation for initiating an employer investigation, or for testifying or participating in any sort of investigation, proceeding, hearing, or action. Employees are also protected from inquiries and discussions about each other's wages.

The Act does not provide anti-retaliation protections to employees with access to wage information of other employees as an essential function of their job if they disclose that wage information to individuals who do not otherwise have access to this information. However, they would be protected if they were disclosing that wage information to someone who also has access to such information, or the disclosure was in response to a complaint or charge or in furtherance of an investigation, proceeding, hearing, or action under the EPA, including an internal employer investigation.

Enhanced Penalties. The Act provides that uncapped compensatory and punitive damages are available in private EPA suits and suits brought by the Secretary of Labor. The Act provides that class action lawsuits brought under the EPA shall proceed as opt-out class actions in conformity with the Federal Rules of Civil Procedure, rather than the current law requiring plaintiffs to *opt-in*.

Section 4. Training.

This section requires the EEOC and the OFCCP to provide training to EEOC employees and affected individuals on pay discrimination.

Section 5. Negotiation Skills Training.

Program Authorization. The Act authorizes the Secretary of Labor (after consultation with the U.S. Secretary of Education) to establish and carry out a grant program to provide negotiation skills training programs that aim to address all pay disparities, including through outreach to women and girls. Eligible entities apply to the Secretary of Labor to obtain grants. Eligible entities include states, local governments, state or local educational agencies, private nonprofit organizations, or community-based organizations.

Incorporating Training into Existing Programs. The Act requires the Secretary of Labor to issue regulation or policy guidance on how it will, to the extent practicable, integrate negotiation skills training into existing education and work training programs, including those authorized under the Elementary and Secondary Education Act, the Carl D. Perkins Career and Technical Education Act, the Higher Education Act, and the Workforce Innovation and Opportunity Act.

Report. The Act mandates the Secretary of Labor, in consultation with the U.S. Secretary of Education, to submit an annual report to Congress on the grant program.

Section 6. Research, Education, and Outreach.

The Act requires the Secretary of Labor to conduct studies and provide information to employers, labor organizations, and the public on ways to eliminate pay disparities. This includes conducting and promoting research, publishing and making available findings from studies and other materials; sponsoring and assisting

state and community informational and educational programs; providing information on the means of eliminating pay disparities; and recognizing and promoting achievements.

Section 7. Establishment of the National Award for Pay Equity in the Workplace.

The Act establishes an annual award entitled the “Secretary of Labor’s National Award for Pay Equity in the Workplace” for an employer that demonstrates substantial effort in eliminating pay disparities by complying with the EPA. The Secretary of Labor will set the criteria for the award. Eligible employers include corporations (including nonprofit corporations); partnerships; professional associations; labor organizations; and entities carrying out educational referral programs or training programs.

Section 8. Collection of Pay Information by the Equal Employment Opportunity Commission.

This section requires the EEOC, within 18 months of enactment, to issue regulations to provide for the collection of compensation data, including hiring, termination, and promotion data, and other employment-related data from employers. This information will be disaggregated by the sex, race and national origin of employees. In collecting this data, the EEOC will consider the most effective and least burdensome means for enforcing the federal laws prohibiting pay discrimination, including the consideration of employer burden.

Section 9. Reinstatement of Pay Equity Programs and Pay Equity Data Collection.

Bureau of Labor Statistics. This section requires the continued collection by the Commissioner of Labor Statistics of gender-based data in the Current Employment Statistics survey.

Office of Federal Contract Compliance Programs. This section sets standards for the OFCCP in addressing systematic wage discrimination. It requires the OFCCP to use the full range of investigatory tools, including pay grade methodology, in considering evidence of possible compensation discrimination. It does not require the OFCCP to use multiple regression analysis or anecdotal evidence for these cases. It instructs the OFCCP to define similarly situated employees in a way that is consistent with the EEOC Compliance Manual and to consider only factors that were used in making compensation decisions in its enforcement activities. It directs the OFCCP to implement a yearly survey to collect compensation and other employment-related data. Finally, it directs the Secretary of Labor to distribute information and statistics to the public on wage discrimination.

Section 10. Prohibitions Relating to Prospective Employees’ Salary and Benefit History.

This section makes it unlawful for employers to use wage history to decide whether to hire a prospective employee. Employers are prohibited from *relying* on or *seeking* a prospective employee’s wage history to determine their wages. The employer can only *rely* on the prospective employee’s prior wage if the employee voluntarily provides it after the employer makes an employment offer. Similarly, the employer may only *seek* a prospective employee’s wage history to confirm prior wage information. The employer can obtain this information only after an employment offer (with compensation) has been made, and the employee responded by volunteering the prior wage information. An employer may not retaliate against an employee or prospective employee who has filed a complaint regarding the use of the salary history. Employers who violate this provision are subject to civil penalties.

Section 11. Authorization of Appropriations.

This section authorizes such sums as may be necessary to carry out the Act.

Section 12. Small Business Assistance.

Effective Date. This section states that the Act and amendments made by the Act will take effect six months after the date of enactment.

Small Business. This section also requires the Secretary of Labor and the EEOC to jointly develop technical assistance materials to assist small businesses in complying with the Act. It further clarifies that to the extent small businesses are exempt from the FLSA, they will also be exempt from the Act.

Section 13. Rule of Construction.

This section states that nothing in the Act will affect the obligation of employers and employees to fully comply with all applicable immigration laws.

Section 14. Severability.

This section adds a standard severability clause.