

The Paycheck Fairness Act

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The landmark Equal Pay Act of 1963 made it illegal for employers to pay unequal wages to women and men who perform equal work. The Equal Pay Act and the civil rights laws that followed helped change the workplace and began to combat wage inequality, but these laws have not closed the persistent gap between women’s and men’s wages. **The Paycheck Fairness Act is necessary to help close the punishing gender wage gap by eliminating loopholes in the Equal Pay Act, helping to break harmful patterns of pay discrimination and strengthening workplace protections for women.**

Legislative Overview

Sec. 1. Short Title.

Paycheck Fairness Act

Sec. 2. Findings.

This section describes the need to address pay disparities, the shortcomings of existing legislation to prevent gender-based pay discrimination and how the Paycheck Fairness Act will rectify the existing limitations of the Equal Pay Act.

Sec. 3. Enhanced Enforcement of Equal Pay Requirements.

▶ **Bona Fide Factor Defense and Modification of Same Establishment Requirement.**

This section amends the Fair Labor Standards Act (FLSA) to narrow the exceptions that employers can use to justify sex-based pay disparities between employees at the same establishment. Current law allows an employer to defend a gender difference in pay if the difference is based on seniority, merit, quantity or quality of production, or “any factor other than sex.” This section removes the broad exception of “any factor other than sex” and replaces it with an exemption only for “a bona fide factor other than sex.” This bona fide factor must: (a) not be based on a sex-based differential in compensation, (b) be job-related, (c) be consistent with the needs of the business and (d) account for the differential entirely. The employer cannot use this defense if an employee demonstrates that other employment practices exist that would serve the same business purposes without resulting in a pay disparity, and that the employer has refused to adopt these alternative practices. This section also deems employees to work at the “same establishment” if they work for the same employer at different workplaces in the same county.

▶ **Nonretaliation Provision.** Amends the nonretaliation provisions of the FLSA to add “ma[king] a charge” to the list of protected activities for which the employer cannot

discharge or discriminate against an employee, and expands the types of proceedings that are covered by the provision. This section also expands the list of protected activities to include inquiring about or discussing wages, and prohibits employers from requiring employees to sign a contract or waiver that would prohibit them from discussing their wages. This new subsection does not apply to employees who have access to wage information as part of a central job function, unless the disclosure of information is in response to a complaint, investigation, proceeding or hearing.

- ▶ **Enhanced Penalties.** Strengthens the enforcement stipulations of the Equal Pay Act to hold an employer liable for paying punitive damages if the employee demonstrates that the employer acted with malice or reckless indifference. This section also allows employees to bring class action lawsuits for violations of the Equal Pay Act.
- ▶ **Action by Secretary.** Authorizes the Secretary of Labor to supervise the payment of punitive damages and allows prevailing class action plaintiffs a longer period in which they can receive their damages payment.

Sec. 4. Training.

When funds are available, the Equal Employment Opportunity Commission (EEOC) and Office of Federal Contract Compliance Programs (OFCCP) will provide trainings to EEOC employees and affected parties on matters involving wage discrimination.

Sec. 5. Negotiation Skills Training for Girls and Women.

Authorizes the Secretary of Labor, in consultation with the Secretary of Education, to establish and execute a competitive grant program to carry out negotiation skills training programs for the purposes of addressing pay disparities, including through outreach to women and girls. These grants will be made available to public agencies, educational agencies, private nonprofit organizations and community-based organizations through an application process. These trainings will be incorporated into existing programs within the Department of Education and the Department of Labor. The Department of Labor, in conjunction with the Department of Education, will issue a report on these programs to Congress one year after enactment.

Sec. 6. Research, Education, and Outreach.

No later than 18 months after enactment, and periodically thereafter, the Secretary of Labor will conduct studies and provide information to employers, labor organizations and the public on ways to eliminate the wage gap, including the wage gaps for women of color. Not later than one year after enactment, the Director of the Women's Bureau, in coordination with the Commissioner of Labor Statistics, shall issue a publicly available report on the wage gap in the teenage labor force.

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

Creates an annual award for National Pay Equity in the Workplace through the Secretary of Labor in order to encourage employers to proactively comply with the FLSA and promote equal pay. Corporations, partnerships, professional associations, labor organizations, business entities and job training programs are eligible to apply for this award.

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

Adds a subsection to the Civil Rights Act of 1964 that requires the EEOC to provide for the

collection of information from employers on compensation and other employment-related data disaggregated by the sex, race and ethnic identity of the employees.

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

Instructs the Bureau of Labor Statistics to continue to collect data on women workers. Additionally, this section instructs the OFCCP, when investigating pay discrimination claims, to use the full range of investigatory tools at its disposal, not limit its consideration of evidence to a small number of types of evidence and evaluation, and not require multiple regression analysis or anecdotal evidence for these cases. This section also instructs 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. The section directs OFCCP to implement a yearly survey to collect compensation and other employment-related data. Finally, the section directs the Secretary of Labor to distribute information and statistics on wage discrimination to the public.

Sec. 10. Prohibitions Relating to Prospective Employees' Salary and Benefit History.

Adds a provision to the FLSA that would make it illegal for an employer to rely on an employee's wage history when considering a prospective employee for employment or determining the prospective employee's wages. This information may only be relied upon when the prospective employee voluntarily provides it to support an argument for a higher wage than the original offer by the employer. This provision also makes it illegal for a prospective employer to seek a prospective employee's wage history unless the employee has voluntarily provided it in response to the employer's offer of employment. An employer may not retaliate against an employee who has filed a complaint regarding salary history. Violators of this provision are subject to civil penalties and payment of special damages to the prospective employee. Class action lawsuits may be filed in these cases.

Sec. 11. Authorization of Appropriations.

Authorizes such sums of money as may be necessary to carry out the Act. Congress cannot use the grant program funds for a congressional earmark.

Sec. 12. Small Business Assistance.

The Act will take effect six months after the date of enactment. The Secretary of Labor and EEOC will jointly develop materials to assist small businesses with complying with the Act. The small enterprise exemptions for the FLSA apply to this Act.

Sec. 13. Rule of Construction.

Nothing in this Act or its amendments shall affect the employer's ability to fully comply with immigration law.

Sec. 14. Severability.

If any provisions or particular applications of this Act or the amendments made by this Act are held to be invalid or unconstitutional, the remainder of the Act, the amendments made by the Act and the other applications thereof shall not be affected.