

110TH CONGRESS
1ST SESSION

H. R. 2019

To amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2007

Ms. NORTON 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 prohibit discrimination in the payment of wages on account of sex, race, or national origin, 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 cited as the “Fair Pay Act of 2007”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) Wage rate differentials exist between equiv-
8 alent jobs segregated by sex, race, and national ori-
9 gin in Government employment and in industries en-

1 gaged in commerce or in the production of goods for
2 commerce.

3 (2) The existence of such wage rate differen-
4 tials—

5 (A) depresses wages and living standards
6 for employees necessary for their health and ef-
7 ficiency;

8 (B) prevents the maximum utilization of
9 the available labor resources;

10 (C) tends to cause labor disputes, thereby
11 burdening, affecting, and obstructing com-
12 merce;

13 (D) burdens commerce and the free flow of
14 goods in commerce; and

15 (E) constitutes an unfair method of com-
16 petition.

17 (3) Discrimination in hiring and promotion has
18 played a role in maintaining a segregated work
19 force.

20 (4) Many women and people of color work in
21 occupations dominated by individuals of their same
22 sex, race, and national origin.

23 (5) A 2000 study conducted by the Census Bu-
24 reau of 400 fields that employed 10,000 full-time,
25 year-round workers found that women were able to

1 earn at least as much as men in just 5 fields: haz-
2 ardous material removal, telecommunications line in-
3 stallation and repair, meeting and convention plan-
4 ning, food preparation, and construction trade as-
5 sistant work.

6 (6) In 2004, an Institute for Women’s Policy
7 Research analysis of data collected in the Current
8 Population Survey by the Bureau of Labor Statistics
9 found that women were paid only 76 cents for every
10 dollar that a man is paid.

11 (7) Section 6(d) of the Fair Labor Standards
12 Act of 1938 (29 U.S.C. 206(d)) prohibits discrimi-
13 nation in compensation for “equal work” on the
14 basis of sex.

15 (8) Title VII of the Civil Rights Act of 1964
16 (42 U.S.C. 2000e et seq.) prohibits discrimination in
17 compensation because of race, color, religion, na-
18 tional origin, and sex. In 1981, the Supreme Court,
19 in its decision in *County of Washington v. Gunther*,
20 held that title VII’s prohibition against discrimina-
21 tion in compensation also applies to jobs that do not
22 constitute “equal work” as defined in section 6(d) of
23 the Fair Labor Standards Act of 1938 (29 U.S.C.
24 206(d)). Decisions of lower courts, however, have
25 demonstrated that further clarification of existing

1 legislation is necessary in order effectively to carry
2 out the intent of Congress to implement the Su-
3 preme Court's holding in its Gunther decision.

4 (9) Artificial barriers to the elimination of dis-
5 crimination in compensation based upon sex, race,
6 and national origin continue to exist more than 3
7 decades after the passage of section 6(d) of the Fair
8 Labor Standards Act of 1938 (29 U.S.C. 206(d))
9 and the Civil Rights Act of 1964. Elimination of
10 such barriers would have positive effects, includ-
11 ing—

12 (A) providing a solution to problems in the
13 economy created by discrimination through
14 wage rate differentials;

15 (B) substantially reducing the number of
16 working women and people of color earning low
17 wages, thereby reducing the dependence on pub-
18 lic assistance; and

19 (C) promoting stable families by enabling
20 working family members to earn a fair rate of
21 pay.

22 **SEC. 3. EQUAL PAY FOR EQUIVALENT JOBS.**

23 (a) AMENDMENT.—Section 6 of the Fair Labor
24 Standards Act of 1938 (29 U.S.C. 206) is amended by
25 adding at the end the following:

1 “(h)(1)(A) Except as provided in subparagraph (B),
2 no employer having employees subject to any provision of
3 this section shall discriminate, within any establishment
4 in which such employees are employed, between employees
5 on the basis of sex, race, or national origin by paying
6 wages to employees in such establishment in a job that
7 is dominated by employees of a particular sex, race, or
8 national origin at a rate less than the rate at which the
9 employer pays wages to employees in such establishment
10 in another job that is dominated by employees of the oppo-
11 site sex or of a different race or national origin, respec-
12 tively, for work on equivalent jobs.

13 “(B) Nothing in subparagraph (A) shall prohibit the
14 payment of different wage rates to employees where such
15 payment is made pursuant to—

16 “(i) a seniority system;

17 “(ii) a merit system;

18 “(iii) a system that measures earnings by quan-
19 tity or quality of production; or

20 “(iv) a differential based on a bona fide factor
21 other than sex, race, or national origin, such as edu-
22 cation, training, or experience, except that this
23 clause shall apply only if—

24 “(I) the employer demonstrates that—

25 “(aa) such factor—

1 “(AA) is job-related with respect
2 to the position in question; or

3 “(BB) furthers a legitimate busi-
4 ness purpose, except that this item
5 shall not apply if the employee dem-
6 onstrates that an alternative employ-
7 ment practice exists that would serve
8 the same business purpose without
9 producing such differential and that
10 the employer has refused to adopt
11 such alternative practice; and

12 “(bb) such factor was actually applied
13 and used reasonably in light of the as-
14 serted justification; and

15 “(II) upon the employer succeeding under
16 subclause (I), the employee fails to demonstrate
17 that the differential produced by the reliance of
18 the employer on such factor is itself the result
19 of discrimination on the basis of sex, race, or
20 national origin by the employer.

21 “(C) The Equal Employment Opportunity Commis-
22 sion shall issue guidelines specifying criteria for deter-
23 mining whether a job is dominated by employees of a par-
24 ticular sex, race, or national origin. Such guidelines shall
25 not include a list of such jobs.

1 “(D) An employer who is paying a wage rate differen-
2 tial in violation of subparagraph (A) shall not, in order
3 to comply with the provisions of such subparagraph, re-
4 duce the wage rate of any employee.

5 “(2) No labor organization or its agents representing
6 employees of an employer having employees subject to any
7 provision of this section shall cause or attempt to cause
8 such an employer to discriminate against an employee in
9 violation of paragraph (1)(A).

10 “(3) For purposes of administration and enforcement
11 of this subsection, any amounts owing to any employee
12 that have been withheld in violation of paragraph (1)(A)
13 shall be deemed to be unpaid minimum wages or unpaid
14 overtime compensation under this section or section 7.

15 “(4) In this subsection:

16 “(A) The term ‘labor organization’ means any
17 organization of any kind, or any agency or employee
18 representation committee or plan, in which employ-
19 ees participate and that exists for the purpose, in
20 whole or in part, of dealing with employers con-
21 cerning grievances, labor disputes, wages, rates of
22 pay, hours of employment, or conditions of work.

23 “(B) The term ‘equivalent jobs’ means jobs that
24 may be dissimilar, but whose requirements are

1 equivalent, when viewed as a composite of skills, ef-
2 fort, responsibility, and working conditions.”.

3 (b) CONFORMING AMENDMENT.—Section 13(a) of
4 the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a))
5 is amended in the matter before paragraph (1) by striking
6 “section 6(d)” and inserting “sections 6(d) and 6(h)”.

7 **SEC. 4. PROHIBITED ACTS.**

8 Section 15(a) of the Fair Labor Standards Act of
9 1938 (29 U.S.C. 215(a)) is amended—

10 (1) by striking the period at the end of para-
11 graph (5) and inserting a semicolon; and

12 (2) by adding after paragraph (5) the following
13 new paragraphs:

14 “(6) to discriminate against any individual be-
15 cause such individual has opposed any act or prac-
16 tice made unlawful by section 6(h) or because such
17 individual made a charge, testified, assisted, or par-
18 ticipated in any manner in an investigation, pro-
19 ceeding, or hearing to enforce section 6(h); or

20 “(7) to discharge or in any other manner dis-
21 criminate against, coerce, intimidate, threaten, or
22 interfere with any employee or any other person be-
23 cause the employee inquired about, disclosed, com-
24 pared, or otherwise discussed the employee’s wages
25 or the wages of any other employee, or because the

1 employee exercised, enjoyed, aided, or encouraged
2 any other person to exercise or enjoy any right
3 granted or protected by section 6(h).”.

4 **SEC. 5. REMEDIES.**

5 (a) ENHANCED PENALTIES.—Section 16(b) of the
6 Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is
7 amended—

8 (1) by inserting after the first sentence the fol-
9 lowing: “Any employer who violates subsection (d) or
10 (h) of section 6 shall additionally be liable for such
11 compensatory or punitive damages as may be appro-
12 priate, except that the United States shall not be lia-
13 ble for punitive damages.”;

14 (2) in the sentence beginning “An action to”,
15 by striking “either of the preceding sentences” and
16 inserting “any of the preceding sentences of this
17 subsection”;

18 (3) in the sentence beginning “No employees”,
19 by striking “No employees” and inserting “Except
20 with respect to class actions brought under sub-
21 section (f), no employee”;

22 (4) in the sentence beginning “The court in”,
23 by striking “in such action” and inserting “in any
24 action brought to recover the liability prescribed in

1 any of the preceding sentences of this subsection”;
2 and

3 (5) by striking “section 15(a)(3)” each place it
4 occurs and inserting “paragraphs (3), (6), and (7)
5 of section 15(a)”.

6 (b) ACTION BY SECRETARY.—Section 16(c) of the
7 Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is
8 amended—

9 (1) in the first sentence—

10 (A) by inserting “or, in the case of a viola-
11 tion of subsection (d) or (h) of section 6, addi-
12 tional compensatory or punitive damages,” be-
13 fore “and the agreement”; and

14 (B) by inserting before the period the fol-
15 lowing: “, or such compensatory or punitive
16 damages, as appropriate”;

17 (2) in the second sentence, by inserting before
18 the period the following: “and, in the case of a viola-
19 tion of subsection (d) or (h) of section 6, additional
20 compensatory or punitive damages”; and

21 (3) in the third sentence, by striking “the first
22 sentence” and inserting “the first or second sen-
23 tence”.

1 (c) FEES.—Section 16 of the Fair Labor Standards
2 Act of 1938 (29 U.S.C. 216) is amended by adding at
3 the end the following:

4 “(f) In any action brought under this section for vio-
5 lation of section 6(h), the court shall, in addition to any
6 other remedies awarded to the prevailing plaintiff or plain-
7 tiffs, allow expert fees as part of the costs. Any such action
8 may be maintained as a class action as provided by the
9 Federal Rules of Civil Procedure.”.

10 **SEC. 6. RECORDS.**

11 (a) TECHNICAL AMENDMENT.—Section 11(c) of the
12 Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) is
13 amended by inserting “(1)” after “(c)”.

14 (b) RECORDS.—Section 11(c) of the Fair Labor
15 Standards Act of 1938 (as amended by subsection (a))
16 is further amended by adding at the end the following:

17 “(2)(A) Every employer subject to section 6(h) shall
18 preserve records that document and support the method,
19 system, calculations, and other bases used by the employer
20 in establishing, adjusting, and determining the wage rates
21 paid to the employees of the employer. Every employer
22 subject to section 6(h) shall preserve such records for such
23 periods of time, and shall make such reports from the
24 records to the Equal Employment Opportunity Commis-
25 sion, as shall be prescribed by the Equal Employment Op-

1 portunity Commission by regulation or order as necessary
2 or appropriate for the enforcement of the provisions of sec-
3 tion 6(h) or any regulation promulgated pursuant to sec-
4 tion 6(h).”.

5 (c) SMALL BUSINESS EXEMPTIONS.—Section 11(c)
6 of the Fair Labor Standards Act of 1938 (as amended
7 by subsections (a) and (b)) is further amended by adding
8 at the end the following:

9 “(B)(i) Every employer subject to section 6(h) that
10 has 25 or more employees on any date during the first
11 or second year after the effective date of this paragraph,
12 or 15 or more employees on any date during any subse-
13 quent year after such second year, shall, in accordance
14 with regulations promulgated by the Equal Employment
15 Opportunity Commission under subparagraph (F), pre-
16 pare and submit to the Equal Employment Opportunity
17 Commission for the year involved a report signed by the
18 president, treasurer, or corresponding principal officer, of
19 the employer that includes information that discloses the
20 wage rates paid to employees of the employer in each clas-
21 sification, position, or job title, or to employees in other
22 wage groups employed by the employer, including informa-
23 tion with respect to the sex, race, and national origin of
24 employees at each wage rate in each classification, posi-
25 tion, job title, or other wage group.”.

1 (d) PROTECTION OF CONFIDENTIALITY.—Section
2 11(c) of the Fair Labor Standards Act of 1938 (as amend-
3 ed by subsections (a) through (c)) is further amended by
4 adding at the end the following:

5 “(ii) The rules and regulations promulgated by the
6 Equal Employment Opportunity Commission under sub-
7 paragraph (F), relating to the form of such a report, shall
8 include requirements to protect the confidentiality of em-
9 ployees, including a requirement that the report shall not
10 contain the name of any individual employee.”.

11 (e) USE; INSPECTIONS; EXAMINATIONS; REGULA-
12 TIONS.—Section 11(c) of the Fair Labor Standards Act
13 of 1938 (as amended by subsections (a) through (d)) is
14 further amended by adding at the end the following:

15 “(C) The Equal Employment Opportunity Commis-
16 sion may publish any information and data that the Equal
17 Employment Opportunity Commission obtains pursuant to
18 the provisions of subparagraph (B). The Equal Employ-
19 ment Opportunity Commission may use the information
20 and data for statistical and research purposes, and com-
21 pile and publish such studies, analyses, reports, and sur-
22 veys based on the information and data as the Equal Em-
23 ployment Opportunity Commission may consider appro-
24 priate.

1 “(D) In order to carry out the purposes of this Act,
2 the Equal Employment Opportunity Commission shall by
3 regulation make reasonable provision for the inspection
4 and examination by any person of the information and
5 data contained in any report submitted to the Equal Em-
6 ployment Opportunity Commission pursuant to subpara-
7 graph (B).

8 “(E) The Equal Employment Opportunity Commis-
9 sion shall by regulation provide for the furnishing of copies
10 of reports submitted to the Equal Employment Oppor-
11 tunity Commission pursuant to subparagraph (B) to any
12 person upon payment of a charge based upon the cost of
13 the service.

14 “(F) The Equal Employment Opportunity Commis-
15 sion shall issue rules and regulations prescribing the form
16 and content of reports required to be submitted under sub-
17 paragraph (B) and such other reasonable rules and regu-
18 lations as the Equal Employment Opportunity Commis-
19 sion may find necessary to prevent the circumvention or
20 evasion of such reporting requirements. In exercising the
21 authority of the Equal Employment Opportunity Commis-
22 sion under subparagraph (B), the Equal Employment Op-
23 portunity Commission may prescribe by general rule sim-
24 plified reports for employers for whom the Equal Employ-
25 ment Opportunity Commission finds that because of the

1 size of the employers a detailed report would be unduly
2 burdensome.”.

3 **SEC. 7. RESEARCH, EDUCATION, AND TECHNICAL ASSIST-**
4 **ANCE PROGRAM; REPORT TO CONGRESS.**

5 Section 4(d) of the Fair Labor Standards Act of
6 1938 (29 U.S.C. 204(d)) is amended by adding at the end
7 the following:

8 “(4) The Equal Employment Opportunity Commis-
9 sion shall conduct studies and provide information and
10 technical assistance to employers, labor organizations, and
11 the general public concerning effective means available to
12 implement the provisions of section 6(h) prohibiting wage
13 rate discrimination between employees performing work in
14 equivalent jobs on the basis of sex, race, or national origin.
15 Such studies, information, and technical assistance shall
16 be based on and include reference to the objectives of such
17 section to eliminate such discrimination. In order to
18 achieve the objectives of such section, the Equal Employ-
19 ment Opportunity Commission shall carry on a continuing
20 program of research, education, and technical assistance
21 including—

22 “(A) conducting and promoting research with
23 the intent of developing means to expeditiously cor-
24 rect the wage rate differentials described in section
25 6(h);

1 “(B) publishing and otherwise making available
2 to employers, labor organizations, professional asso-
3 ciations, educational institutions, the various media
4 of communication, and the general public the find-
5 ings of studies and other materials for promoting
6 compliance with section 6(h);

7 “(C) sponsoring and assisting State and com-
8 munity informational and educational programs; and

9 “(D) providing technical assistance to employ-
10 ers, labor organizations, professional associations,
11 and other interested persons on means of achieving
12 and maintaining compliance with the provisions of
13 section 6(h).

14 “(5) The report submitted biennially by the Secretary
15 to Congress under paragraph (1) shall include a separate
16 evaluation and appraisal regarding the implementation of
17 section 6(h).”.

18 **SEC. 8. CONFORMING AMENDMENTS.**

19 (a) CONGRESSIONAL EMPLOYEES.—

20 (1) APPLICATION.—Section 203(a)(1) of the
21 Congressional Accountability Act of 1995 (2 U.S.C.
22 1313(a)(1)) is amended—

23 (A) by striking “subsections (a)(1) and (d)
24 of section 6” and inserting “subsections (a)(1),
25 (d), and (h) of section 6”; and

1 (B) by striking “206 (a)(1) and (d)” and
2 inserting “206(a)(1), (d), and (h)”.

3 (2) REMEDIES.—Section 203(b) of such Act (2
4 U.S.C. 1313(b)) is amended by inserting before the
5 period the following: “or, in an appropriate case,
6 under section 16(f) of such Act (29 U.S.C. 216(f))”.

7 (b) EXECUTIVE BRANCH EMPLOYEES.—

8 (1) APPLICATION.—Section 413(a)(1) of title 3,
9 United States Code, is amended by striking “sub-
10 sections (a)(1) and (d) of section 6” and inserting
11 “subsections (a)(1), (d), and (h) of section 6”.

12 (2) REMEDIES.—Section 413(b) of such title is
13 amended by inserting before the period the fol-
14 lowing: “or, in an appropriate case, under section
15 16(f) of such Act”.

16 **SEC. 9. EFFECTIVE DATE.**

17 The amendments made by this Act shall take effect
18 1 year after the date of enactment of this Act.

○