



THE PAYCHECK FAIRNESS ACT, H.R. 1338, IS ESSENTIAL TO COMBATING PAY DISCRIMINATION AGAINST WOMEN IN THE WORKPLACE

The Paycheck Fairness Act is a critical step forward in the fight for fair pay. The legislation clarifies and strengthens the protections available under the Equal Pay Act of 1963 (“EPA”) and closes gaps that have led to a narrow, constrained reading of the EPA’s protections. It also includes other improvements to strengthen the enforcement tools used to uncover pay discrimination, prohibit unfair reprisals targeting employees who discuss pay and pay disparities on the job, and encourage voluntary efforts by employers to evaluate – and correct when necessary – their own pay practices. Improving existing protections and tools for tackling pay discrimination is critically important for women, particularly women of color who are among the lowest paid workers. Too many women continue to be paid less than their male counterparts, even when they perform equal work. Passage of the Paycheck Fairness Act will go a long way towards ensuring women can challenge and eliminate these discriminatory pay practices in the workplace.

KEY PROVISIONS IN THE PAYCHECK FAIRNESS ACT

Among its provisions, the Paycheck Fairness Act will:

- prohibit employers from retaliating against employees who discuss their salaries with their colleagues and find out about illegal pay disparities;
- help ensure employers have legitimate, job-related reasons for pay disparities when they occur so that unfair biases do not infect pay decisions;
- recognize employers for excellence in their pay practices;
- offer technical assistance and promote strategies for use by employers to conduct voluntary analyses of their own pay practices and identify where improvements are needed;
- improve federal enforcement efforts by ensuring the Department of Labor utilizes the full range of investigatory tools to uncover pay discrimination, and directing the Equal Employment Opportunity Commission to conduct a survey of what pay information is available to assist federal agencies with enforcing pay discrimination laws;
- instruct the Department of Labor to conduct studies and review available research and data to provide information on how to identify, correct, and eliminate illegal pay disparities; and
- improve the remedies available to plaintiffs in EPA cases by allowing them to collect the same types of damages that are available to plaintiffs who file pay discrimination claims under other laws, and removing obstacles for plaintiffs to participate in class actions challenging systemic pay discrimination.

OPPOSITION ARGUMENTS ARE UNFOUNDED

Criticisms that have been launched against the Paycheck Fairness Act are unwarranted and misplaced. The bill is carefully designed to balance the interests of both employees and employers.

- The bill protects employers from improper disclosure of confidential pay information by employees with access to such information, and it protects employees when they discuss their pay or discriminatory pay practices with their colleagues.
- Although the bill now provides for punitive and compensatory damages under the EPA, it makes clear that such awards must be appropriate and consistent with the law, relying on courts to look to prevailing law to ensure damage awards are appropriately tailored for each case.
- The bill accommodates employer practices and concerns by limiting which establishments are used for salary comparisons, to avoid unfair comparisons, for example, where establishments are located in different parts of the country and operate as entirely separate and unrelated units when pay decisions are made.
- Changes allowing individuals to “opt-out” of class actions filed under the EPA – rather than requiring them to “opt-in” – will help provide consistency with class action rules governing other civil rights laws.
- And, expanding the investigatory tools available for use by federal agencies to investigate, identify, target, and remedy discriminatory pay practices is critical to ensure that laws prohibiting pay discrimination are vigorously enforced.

CONCLUSION

The Paycheck Fairness Act is an essential tool in the fight against pay discrimination – and its passage is critically important for women from all racial and ethnic backgrounds who continue to experience persistent disparities in pay. The legislation will close gaps in current law that have made it difficult for women to make use of the Equal Pay Act, and expand the tools available to uncover and challenge discriminatory pay practices. All women deserve to be paid fairly for their work and the Paycheck Fairness Act moves us one step closer to achieving that goal.