

# Union Calendar No. 502

110TH CONGRESS  
2D SESSION

# H. R. 1338

[Report No. 110-783]

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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2007

Ms. DELAURO (for herself, Mr. HALL of New York, Mr. LEVIN, Mr. LARSON of Connecticut, Ms. DEGETTE, Ms. BORDALLO, Mr. SKELTON, Mr. HONDA, Ms. BERKLEY, Ms. SCHAKOWSKY, Mr. DOYLE, Mr. KILDEE, Mr. BOSWELL, Ms. CARSON, Mr. FILNER, Mr. OBERSTAR, Mr. WYNN, Ms. ESHOO, Mr. PRICE of North Carolina, Ms. SCHWARTZ, Mrs. MALONEY of New York, Mrs. CAPPS, Mr. HINCHEY, Mr. GEORGE MILLER of California, Mr. BUTTERFIELD, Mr. MORAN of Virginia, Mr. LANTOS, Ms. WOOLSEY, Ms. NORTON, Mr. DINGELL, Ms. MCCOLLUM of Minnesota, Mr. DOGGETT, Mr. OBEY, Mr. MOORE of Kansas, Ms. KILPATRICK, Mr. DEFazio, Mr. BERMAN, Ms. ZOE LOFGREN of California, Mrs. CHRISTENSEN, Mr. ALLEN, Mr. SHERMAN, Mr. CONYERS, Mr. KENNEDY, Mr. RYAN of Ohio, Mr. BACA, Ms. SOLIS, Mr. ELLISON, Mrs. MCCARTHY of New York, and Mr. GRIJALVA) introduced the following bill; which was referred to the Committee on Education and Labor

JULY 28, 2008

Additional sponsors: Mr. ETHERIDGE, Mr. WAXMAN, Mr. MCGOVERN, Mr. HOLT, Mr. WU, Ms. SLAUGHTER, Mr. SERRANO, Mr. SESTAK, Mr. LEWIS of Georgia, Mr. MEEKS of New York, Mr. PASTOR, Ms. BALDWIN, Mr. DAVIS of Illinois, Mr. FARR, Ms. JACKSON-LEE of Texas, Mrs. LOWEY, Ms. MATSUI, Mr. McDERMOTT, Mr. McNULTY, Mr. NADLER, Mr. STARK, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. WEXLER, Mr. LOEBSACK, Ms. SUTTON, Mr. TIERNEY, Ms. LINDA T. SÁNCHEZ of California, Mr. ANDREWS, Mr. UDALL of New Mexico, Mr. AL GREEN of Texas, Mr. DICKS, Mr. MILLER of North Carolina, Mr. ABERCROMBIE, Mrs. TAUSCHER, Mr. ISRAEL, Ms. SHEA-PORTER, Ms. CLARKE, Mr. CROWLEY, Mr. HARE, Mr. RODRIGUEZ, Mr. SCHIFF, Mr. BISHOP of New

York, Mr. PAYNE, Ms. HIRONO, Mr. COURTNEY, Mr. COHEN, Mr. BRADY of Pennsylvania, Mr. JOHNSON of Georgia, Mr. SMITH of Washington, Mr. ENGEL, Ms. ROYBAL-ALLARD, Mr. DELAHUNT, Mrs. NAPOLITANO, Mrs. JONES of Ohio, Ms. WATSON, Mr. LANGEVIN, Mr. ROTHMAN, Mrs. DAVIS of California, Mrs. GILLIBRAND, Mr. JACKSON of Illinois, Mr. WEINER, Ms. CORRINE BROWN of Florida, Mr. CAPUANO, Mr. CARNAHAN, Mr. FRANK of Massachusetts, Mr. GUTIERREZ, Mr. HOLDEN, Mr. HINOJOSA, Mr. JEFFERSON, Ms. LEE, Mr. MICHAUD, Mr. NEAL of Massachusetts, Mr. OLVER, Mr. PALLONE, Mr. VAN HOLLEN, Mr. THOMPSON of Mississippi, Ms. WASSERMAN SCHULTZ, Mr. RUPPERSBERGER, Mr. POMEROY, Mr. CUMMINGS, Ms. HOOLEY, Mr. BISHOP of Georgia, Mr. CRAMER, Mr. BERRY, Mr. FATTAH, Mr. KIND, Mr. MARKEY, Ms. KAPTUR, Mr. CHANDLER, Mr. GENE GREEN of Texas, Mr. BAIRD, Mr. MCNERNEY, Mr. WELCH of Vermont, Ms. VELÁZQUEZ, Mr. YARMUTH, Mr. MEEHAN, Ms. CASTOR, Mr. TOWNS, Mr. GONZALEZ, Mr. MURPHY of Connecticut, Mr. ACKERMAN, Mr. THOMPSON of California, Mr. RAHALL, Mr. REYES, Mr. BECERRA, Mr. EMANUEL, Mr. MOLLOHAN, Mr. WATT, Mr. PASCRELL, Mr. CLYBURN, Mr. CLAY, Mr. HASTINGS of Florida, Mr. RANGEL, Mr. RUSH, Ms. LINDA T. SÁNCHEZ of California, Mr. COSTELLO, Mr. ARCURI, Mr. HOYER, Mr. ROSS, Mr. MEEK of Florida, Mr. STUPAK, Mr. SCOTT of Virginia, Mr. MATHESON, Mr. INSLEE, Mr. KUCINICH, Ms. MOORE of Wisconsin, Ms. HARMAN, Mr. DAVIS of Alabama, Mr. CLEAVER, Mr. KANJORSKI, Mr. HODES, Mr. HIGGINS, Mr. BLUMENAUER, Mr. VISCLOSKEY, Mr. ALTMIRE, Ms. HERSETH SANDLIN, Mr. PETERSON of Minnesota, Mr. MURTHA, Mr. PERLMUTTER, Mr. LINCOLN DAVIS of Tennessee, Mr. SCOTT of Georgia, Mr. SIRES, Mr. BOYD of Florida, Ms. WATERS, Mr. BRALEY of Iowa, Mr. FALEOMAVAEGA, Mr. COOPER, Mr. LARSEN of Washington, Mr. MELANCON, Mr. SARBANES, Mr. SPRATT, Mr. KAGEN, Mr. WILSON of Ohio, Mr. LYNCH, Mr. EDWARDS, Mr. WALZ of Minnesota, Mr. SNYDER, Mr. BARROW, Ms. GIFFORDS, Mr. MAHONEY of Florida, Mr. SALAZAR, Mr. SPACE, Mr. MITCHELL, Mr. SHULER, Mr. LIPINSKI, Mr. CARNEY, Mr. ELLSWORTH, Mr. BOREN, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. CUELLAR, Mr. ORTIZ, Mr. KLEIN of Florida, Mr. SHAYS, Mr. MCINTYRE, Mr. UDALL of Colorado, Mr. MARSHALL, Mr. BOUCHER, Mr. CARDOZA, Ms. SPEIER, Mr. CARSON, Ms. RICHARDSON, and Ms. TSONGAS

JULY 28, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 6, 2007]

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## 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.

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 “Paycheck Fairness Act”.*

5       **SEC. 2. FINDINGS.**

6       *Congress finds the following:*

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

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

16              (3) *The existence of such pay disparities—*

1           (A) depresses the wages of working families  
2           who rely on the wages of all members of the fam-  
3           ily to make ends meet;

4           (B) undermines women's retirement secu-  
5           rity, which is often based on earnings while in  
6           the workforce;

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

9           (D) has been spread and perpetuated,  
10          through commerce and the channels and instru-  
11          mentalities of commerce, among the workers of  
12          the several States;

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

15          (F) constitutes an unfair method of com-  
16          petition in commerce;

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

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

22          (I) in many instances, may deprive workers  
23          of equal protection on the basis of sex in viola-  
24          tion of the 5th and 14th amendments.

1           (4)(A) *Artificial barriers to the elimination of*  
2           *discrimination in the payment of wages on the basis*  
3           *of sex continue to exist decades after the enactment of*  
4           *the Fair Labor Standards Act of 1938 (29 U.S.C. 201*  
5           *et seq.) and the Civil Rights Act of 1964 (42 U.S.C.*  
6           *2000a et seq.).*

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

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

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

17               (ii) *substantially reducing the number of*  
18               *working women earning unfairly low wages,*  
19               *thereby reducing the dependence on public assist-*  
20               *ance;*

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

23               (iv) *remedying the effects of past discrimi-*  
24               *nation on the basis of sex and ensuring that in*

1        *the future workers are afforded equal protection*  
2        *on the basis of sex; and*

3                *(v) ensuring equal protection pursuant to*  
4        *Congress' power to enforce the 5th and 14th*  
5        *amendments.*

6                *(5) The Department of Labor and the Equal*  
7        *Employment Opportunity Commission have impor-*  
8        *tant and unique responsibilities to help ensure that*  
9        *women receive equal pay for equal work.*

10               *(6) The Department of Labor is responsible for—*

11                *(A) collecting and making publicly avail-*  
12        *able information about women's pay;*

13                *(B) ensuring that companies receiving Fed-*  
14        *eral contracts comply with anti-discrimination*  
15        *affirmative action requirements of Executive*  
16        *Order 11246 (relating to equal employment op-*  
17        *portunity);*

18                *(C) disseminating information about wom-*  
19        *en's rights in the workplace;*

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

22                *(E) being proactive in investigating and*  
23        *prosecuting equal pay violations, especially sys-*  
24        *temic violations, and in enforcing all of its man-*  
25        *dates.*

1           (7) *The Equal Employment Opportunity Com-*  
 2           *mission is the primary enforcement agency for claims*  
 3           *made under the Equal Pay Act, and issues regula-*  
 4           *tions and guidance on appropriate interpretations of*  
 5           *the law.*

6           (8) *With a stronger commitment by the Depart-*  
 7           *ment of Labor and the Equal Employment Oppor-*  
 8           *tunity Commission to their responsibilities, increased*  
 9           *information about the provisions added by the Equal*  
 10          *Pay Act of 1963, wage data, and more effective rem-*  
 11          *edies, women will be better able to recognize and en-*  
 12          *force their rights.*

13          (9) *Certain employers have already made great*  
 14          *strides in eradicating unfair pay disparities in the*  
 15          *workplace and their achievements should be recog-*  
 16          *nized.*

17 **SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**  
 18 **QUIREMENTS.**

19          (a) *BONA-FIDE FACTOR DEFENSE AND MODIFICATION*  
 20          *OF SAME ESTABLISHMENT REQUIREMENT.*—Section  
 21          *6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.*  
 22          *206(d)(1)) is amended—*

23               (1) *by striking “No employer having” and in-*  
 24               *serting “(A) No employer having”;*

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

4           (3) by inserting at the end the following:

5           “(B) The bona fide factor defense described in subpara-  
 6 graph (A)(v) shall apply only if the employer demonstrates  
 7 that such factor (i) is not based upon or derived from a  
 8 sex-based differential in compensation; (ii) is job-related  
 9 with respect to the position in question; and (iii) is con-  
 10 sistent with business necessity. Such defense shall not apply  
 11 where the employee demonstrates that an alternative em-  
 12 ployment practice exists that would serve the same business  
 13 purpose without producing such differential and that the  
 14 employer has refused to adopt such alternative practice.

15          “(C) For purposes of subparagraph (A), employees  
 16 shall be deemed to work in the same establishment if the  
 17 employees work for the same employer at workplaces located  
 18 in the same county or similar political subdivision of a  
 19 State. The preceding sentence shall not be construed as lim-  
 20 iting broader applications of the term ‘establishment’ con-  
 21 sistent with rules prescribed or guidance issued by the  
 22 Equal Opportunity Employment Commission.”.

23          (b) APPLICATION OF PROVISIONS.—Section 6(d)(1) of  
 24 the Fair Labor Standards Act of 1938 (29 U.S.C.  
 25 206(d)(1)) is further amended by adding at the end the fol-

1    *lowing: “The provisions of this subsection shall apply to*  
 2    *applicants for employment if such applicants, upon em-*  
 3    *ployment by the employer, would be subject to any provi-*  
 4    *sions of this section.”.*

5        *(c) NONRETALIATION PROVISION.—Section 15 of the*  
 6    *Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3))*  
 7    *is amended—*

8            *(1) in subsection (a)(3), by striking “employee*  
 9        *has filed” and all that follows and inserting “em-*  
 10       *ployee—*

11            *“(A) has made a charge or filed any com-*  
 12        *plaint or instituted or caused to be instituted*  
 13        *any investigation, proceeding, hearing, or action*  
 14        *under or related to this Act, including an inves-*  
 15        *tigation conducted by the employer, or has testi-*  
 16        *fied or is planning to testify or has assisted or*  
 17        *participated in any manner in any such inves-*  
 18        *tigation, proceeding, hearing or action or in an*  
 19        *investigation conducted by the employer, or has*  
 20        *served or is planning to serve on an industry*  
 21        *Committee; or*

22            *“(B) has inquired about, discussed or dis-*  
 23        *closed the wages of the employee or another em-*  
 24        *ployee.”; and*

25        *(2) by adding at the end the following:*

1       “(c) Subsection (a)(3)(B) shall not apply to instances  
 2 in which an employee who has access to the wage informa-  
 3 tion of other employees as a part of such employee’s essen-  
 4 tial job functions discloses the wages of such other employees  
 5 to individuals who do not otherwise have access to such in-  
 6 formation, unless such disclosure is in response to a com-  
 7 plaint or charge or in furtherance of an investigation, pro-  
 8 ceeding, hearing, or action under section 6(d) or an inves-  
 9 tigation conducted by the employer. Nothing in this sub-  
 10 section shall be construed to limit the rights of an employee  
 11 provided under any other provision of law.”.

12       (d) *ENHANCED PENALTIES*.—Section 16(b) of the Fair  
 13 Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amend-  
 14 ed—

15           (1) by inserting after the first sentence the fol-  
 16 lowing: “Any employer who violates section 6(d) shall  
 17 additionally be liable for such compensatory damages  
 18 or punitive damages as may be appropriate, except  
 19 that the United States shall not be liable for punitive  
 20 damages.”;

21           (2) in the sentence beginning “An action to”, by  
 22 striking “either of the preceding sentences” and in-  
 23 serting “any of the preceding sentences of this sub-  
 24 section”;

1           (3) *in the sentence beginning “No employees*  
 2           *shall”, by striking “No employees” and inserting*  
 3           *“Except with respect to class actions brought to en-*  
 4           *force section 6(d), no employee”;*

5           (4) *by inserting after the sentence referred to in*  
 6           *paragraph (3), the following: “Notwithstanding any*  
 7           *other provision of Federal law, any action brought to*  
 8           *enforce section 6(d) may be maintained as a class ac-*  
 9           *tion as provided by the Federal Rules of Civil Proce-*  
 10          *dure.”; and*

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

12                (A) *by striking “in such action” and insert-*  
 13                *ing “in any action brought to recover the liabil-*  
 14                *ity prescribed in any of the preceding sentences*  
 15                *of this subsection”; and*

16                (B) *by inserting before the period the fol-*  
 17                *lowing: “, including expert fees”.*

18          (e) *ACTION BY SECRETARY.—Section 16(c) of the Fair*  
 19          *Labor Standards Act of 1938 (29 U.S.C. 216(c)) is amend-*  
 20          *ed—*

21                (1) *in the first sentence—*

22                   (A) *by inserting “or, in the case of a viola-*  
 23                   *tion of section 6(d), additional compensatory or*  
 24                   *punitive damages,” before “and the agreement”;*  
 25                   *and*

1           (B) by inserting before the period the fol-  
 2           lowing: “, or such compensatory or punitive  
 3           damages, as appropriate”;

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

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

11          (4) in the last sentence—

12           (A) by striking “commenced in the case”  
 13           and inserting “commenced—  
 14           “(1) in the case”;

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

17           (C) by adding at the end the following:

18           “(2) in the case of a class action brought to en-  
 19           force section 6(d), on the date on which the individual  
 20           becomes a party plaintiff to the class action.”.

21 **SEC. 4. TRAINING.**

22          *The Equal Employment Opportunity Commission and*  
 23          *the Office of Federal Contract Compliance Programs, sub-*  
 24          *ject to the availability of funds appropriated under section*  
 25          *11, shall provide training to Commission employees and af-*

1 *affected individuals and entities on matters involving dis-*  
 2 *crimination in the payment of wages.*

3 **SEC. 5. NEGOTIATION SKILLS TRAINING FOR GIRLS AND**  
 4 **WOMEN.**

5 *(a) PROGRAM AUTHORIZED.—*

6 *(1) IN GENERAL.—The Secretary of Labor, after*  
 7 *consultation with the Secretary of Education, is au-*  
 8 *thorized to establish and carry out a grant program.*

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

13 *(3) ELIGIBLE ENTITIES.—To be eligible to re-*  
 14 *ceive a grant under this subsection, an entity shall be*  
 15 *a public agency, such as a State, a local government*  
 16 *in a metropolitan statistical area (as defined by the*  
 17 *Office of Management and Budget), a State edu-*  
 18 *cational agency, or a local educational agency, a pri-*  
 19 *vate nonprofit organization, or a community-based*  
 20 *organization.*

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

1           (5) *USE OF FUNDS.*—*An entity that receives a*  
2           *grant under this subsection shall use the funds made*  
3           *available through the grant to carry out an effective*  
4           *negotiation skills training program that empowers*  
5           *girls and women. The training provided through the*  
6           *program shall help girls and women strengthen their*  
7           *negotiation skills to allow the girls and women to ob-*  
8           *tain higher salaries and rates of compensation that*  
9           *are equal to those paid to similarly-situated male em-*  
10          *ployees.*

11          (b) *INCORPORATING TRAINING INTO EXISTING PRO-*  
12          *GRAMS.*—*The Secretary of Labor and the Secretary of Edu-*  
13          *cation shall issue regulations or policy guidance that pro-*  
14          *vides for integrating the negotiation skills training, to the*  
15          *extent practicable, into programs authorized under—*

16               (1) *in the case of the Secretary of Education, the*  
17               *Elementary and Secondary Education Act of 1965*  
18               *(20 U.S.C. 6301 et seq.), the Carl D. Perkins Voca-*  
19               *tional and Technical Education Act of 1998 (20*  
20               *U.S.C. 2301 et seq.), the Higher Education Act of*  
21               *1965 (20 U.S.C. 1001 et seq.), and other programs*  
22               *carried out by the Department of Education that the*  
23               *Secretary of Education determines to be appropriate;*  
24               *and*

1           (2) *in the case of the Secretary of Labor, the*  
2           *Workforce Investment Act of 1998 (29 U.S.C. 2801 et*  
3           *seq.), and other programs carried out by the Depart-*  
4           *ment of Labor that the Secretary of Labor determines*  
5           *to be appropriate.*

6           (c) *REPORT.*—*Not later than 1 year after the date of*  
7           *enactment of this Act, and annually thereafter, the Sec-*  
8           *retary of Labor and the Secretary of Education shall pre-*  
9           *pare and submit to Congress a report describing the activi-*  
10          *ties conducted under this section and evaluating the effec-*  
11          *tiveness of such activities in achieving the purposes of this*  
12          *Act.*

13   **SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.**

14          *The Secretary of Labor shall conduct studies and pro-*  
15          *vide information to employers, labor organizations, and the*  
16          *general public concerning the means available to eliminate*  
17          *pay disparities between men and women, including—*

18               (1) *conducting and promoting research to de-*  
19               *velop the means to correct expeditiously the conditions*  
20               *leading to the pay disparities;*

21               (2) *publishing and otherwise making available to*  
22               *employers, labor organizations, professional associa-*  
23               *tions, educational institutions, the media, and the*  
24               *general public the findings resulting from studies and*

1        *other materials, relating to eliminating the pay dis-*  
2        *parities;*

3            (3) *sponsoring and assisting State and commu-*  
4        *nity informational and educational programs;*

5            (4) *providing information to employers, labor*  
6        *organizations, professional associations, and other in-*  
7        *terested persons on the means of eliminating the pay*  
8        *disparities;*

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

13           (6) *convening a national summit to discuss, and*  
14       *consider approaches for rectifying, the pay dispari-*  
15       *ties.*

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

18        (a) *IN GENERAL.*—*There is established the Secretary*  
19       *of Labor’s National Award for Pay Equity in the Work-*  
20       *place, which shall be awarded, as appropriate, to encourage*  
21       *proactive efforts to comply with this Act.*

22        (b) *CRITERIA FOR QUALIFICATION.*—*The Secretary of*  
23       *Labor shall set criteria for receipt of the award, including*  
24       *a requirement that an employer has made substantial effort*  
25       *to eliminate pay disparities between men and women, and*

1 *deserves special recognition as a consequence of such effort.*  
 2 *The secretary shall establish procedures for the application*  
 3 *and presentation of the award.*

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

6 *(1)(A) a corporation, including a nonprofit cor-*  
 7 *poration;*

8 *(B) a partnership;*

9 *(C) a professional association;*

10 *(D) a labor organization; and*

11 *(E) a business entity similar to an entity de-*  
 12 *scribed in any of subparagraphs (A) through (D);*

13 *(2) an entity carrying out an education referral*  
 14 *program, a training program, such as an apprentice-*  
 15 *ship or management training program, or a similar*  
 16 *program; and*

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

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

22 *Section 709 of the Civil Rights Act of 1964 (42 U.S.C.*  
 23 *2000e–8) is amended by adding at the end the following:*

24 *“(f)(1) Not later than 18 months after the date of en-*  
 25 *actment of this subsection, the Commission shall—*

1           “(A) complete a survey of the data that is cur-  
2           rently available to the Federal Government relating to  
3           employee pay information for use in the enforcement  
4           of Federal laws prohibiting pay discrimination and,  
5           in consultation with other relevant Federal agencies,  
6           identify additional data collections that will enhance  
7           the enforcement of such laws; and

8           “(B) based on the results of the survey and con-  
9           sultations under subparagraph (A), issue regulations  
10          to provide for the collection of pay information data  
11          from employers as described by the sex, race, and na-  
12          tional origin of employees.

13          “(2) In implementing paragraph (1), the Commission  
14          shall have as its primary consideration the most effective  
15          and efficient means for enhancing the enforcement of Fed-  
16          eral laws prohibiting pay discrimination. For this purpose,  
17          the Commission shall consider factors including the imposi-  
18          tion of burdens on employers, the frequency of required re-  
19          ports (including which employers should be required to pre-  
20          pare reports), appropriate protections for maintaining data  
21          confidentiality, and the most effective format for the data  
22          collection reports.”.

1 **SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**  
 2 **PAY EQUITY DATA COLLECTION.**

3 (a) *BUREAU OF LABOR STATISTICS DATA COLLEC-*  
 4 *TION.—The Commissioner of Labor Statistics shall con-*  
 5 *tinue to collect data on women workers in the Current Em-*  
 6 *ployment Statistics survey.*

7 (b) *OFFICE OF FEDERAL CONTRACT COMPLIANCE*  
 8 *PROGRAMS INITIATIVES.—The Director of the Office of Fed-*  
 9 *eral Contract Compliance Programs shall ensure that em-*  
 10 *ployees of the Office—*

11 (1)(A) *shall use the full range of investigatory*  
 12 *tools at the Office’s disposal, including pay grade*  
 13 *methodology;*

14 (B) *in considering evidence of possible compensa-*  
 15 *tion discrimination—*

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

18 (ii) *shall not limit its evaluation of the evi-*  
 19 *dence to a small number of methods of evalu-*  
 20 *ating the evidence; and*

21 (C) *shall not require a multiple regression anal-*  
 22 *ysis or anecdotal evidence for a compensation dis-*  
 23 *crimination case;*

24 (2) *for purposes of its investigative, compliance,*  
 25 *and enforcement activities, shall define “similarly sit-*  
 26 *uated employees” in a way that is consistent with*

1        *and not more stringent than the definition provided*  
2        *in item 1 of subsection A of section 10–III of the*  
3        *Equal Employment Opportunity Commission Com-*  
4        *pliance Manual (2000), and shall consider only fac-*  
5        *tors that the Office’s investigation reveals were used*  
6        *in making compensation decisions; and*

7                *(3) shall reinstate the Equal Opportunity Sur-*  
8        *vey, as required by section 60–2.18 of title 41, Code*  
9        *of Federal Regulations, designating not less than half*  
10       *of all nonconstruction contractor establishments each*  
11       *year to prepare and file such survey, and shall review*  
12       *and utilize the responses to such survey to identify*  
13       *contractor establishments for further evaluation and*  
14       *for other enforcement purposes as appropriate.*

15        *(c) DEPARTMENT OF LABOR DISTRIBUTION OF WAGE*  
16       *DISCRIMINATION INFORMATION.—The Secretary of Labor*  
17       *shall make readily available (in print, on the Department*  
18       *of Labor website, and through any other forum that the De-*  
19       *partment may use to distribute compensation discrimina-*  
20       *tion information), accurate information on compensation*  
21       *discrimination, including statistics, explanations of em-*  
22       *ployee rights, historical analyses of such discrimination, in-*  
23       *structions for employers on compliance, and any other in-*  
24       *formation that will assist the public in understanding and*  
25       *addressing such discrimination.*

1 ***SEC. 10. AUTHORIZATION OF APPROPRIATIONS.***

2 *There are authorized to be appropriated \$15,000,000*

3 *to carry out this Act.*

Union Calendar No. 502

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**H. R. 1338**

[Report No. 110-783]

**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.

JULY 28, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed