

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 7) 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, AND PROVIDING FOR CONSIDERATION OF THE RESOLUTION (H. RES. 124) EXPRESSING OPPOSITION TO BANNING SERVICE IN THE ARMED FORCES BY OPENLY TRANSGENDER INDIVIDUALS

MARCH 25, 2019.—Referred to the House Calendar and ordered to be printed

Mrs. TORRES of California, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 252]

The Committee on Rules, having had under consideration House Resolution 252, by a record vote of 9 to 4, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 7, the Paycheck Fairness Act, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Education and Labor. The resolution waives all points of order against consideration of the bill. The resolution makes in order as original text for the purpose of amendment an amendment in the nature of a substitute consisting of the text of Rules Committee Print 116-8, modified by the amendment printed in part A of this report, and provides that it shall be considered as read. The resolution waives all points of order against that amendment in the nature of a substitute. The resolution makes in order only those further amendments printed in part B of this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in part B of this report. The resolution provides one

motion to recommit with or without instructions. The resolution provides for consideration of H. Res. 124, Expressing opposition to banning service in the Armed Forces by openly transgender individuals, under a closed rule. The resolution provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Armed Services. The resolution waives all points of order against consideration of H. Res. 124. The resolution provides that the bill shall be considered as read and shall not be subject to a demand for division of the question.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of H.R. 7 includes a waiver of clause 12(b) of rule XXI, which prohibits consideration of a bill unless there is a searchable electronic comparative print that shows how the text of the bill as proposed to be considered differs from the text of the bill as reported.

The waiver of all points of order against the amendment in the nature of a substitute made in order as original text, as amended, includes a waiver of clause 12(a)(2) of rule XXI, which prohibits consideration of an amendment in the nature of a substitute unless there is a searchable electronic comparative print that shows how the amendment in the nature of a substitute proposes to change current law.

Although the resolution waives all points of order against the amendments printed in part B of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against consideration of H. Res. 124, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 38

Motion by Mr. Cole to amend the rule to H.R. 7 to make in order and provide the appropriate waivers to amendment #14, offered by Rep. Byrne (AL), which clarifies that a reasonable attorney's fee for any contingent attorney's fee shall not exceed 20 percent of any judgment awarded to the plaintiff or plaintiffs. Defeated: 3–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 39

Motion by Mrs. Lesko to amend the rule to H.R. 7 to make in order and provide the appropriate waivers to amendment #18, of-

ferred by Rep. Bost (IL), which provides that an employer who conducts a compensation self-evaluation audit and such audit reveals illegal differentials in pay, and takes reasonable steps to address the differentials, would not be liable for liquidated, compensatory, or punitive damages but could still be liable for the back pay of an employee who was not paid correctly. Defeated: 3–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 40

Motion by Mrs. Torres to report the rule. Adopted: 9–4

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Yea	Mr. Cole	Nay
Mrs. Torres	Yea	Mr. Woodall	Nay
Mr. Perlmutter	Yea	Mr. Burgess	Nay
Mr. Raskin	Yea	Mrs. Lesko	Nay
Ms. Scanlon	Yea		
Mr. Morelle	Yea		
Ms. Shalala	Yea		
Mr. DeSaulnier	Yea		
Mr. McGovern, Chairman	Yea		

SUMMARY OF THE AMENDMENT IN PART A CONSIDERED AS ADOPTED

1. Scott, Bobby (VA): Clarifies how under section 8 the EEOC will build on existing reporting requirements to help it address gender and racial pay gaps.

SUMMARY OF THE AMENDMENTS IN PART B MADE IN ORDER

1. Foxx (NC): Strikes Section 8 relating to the collection by the Equal Employment Opportunity Commission of pay information and other employment-related data (including hiring, termination, and promotion data) disaggregated by the sex, race, and national origin of employees. (10 minutes)

2. Torres, Norma (CA): Recognizes the severity of the gender wage gap for girls and women of color. (10 minutes)

3. Torres, Norma (CA), Harder (CA): Highlights the gender pay gap's impact on women and girls of color during research and education efforts conducted by the Secretary of Labor. (10 minutes)

4. Byrne (AL): Clarifies that the “any other factor other than sex” defense in the Equal Pay Act means “a bona fide business-related reason other than sex.” Strikes Section 3(a)(B) relating to the application of the factor other than sex defense to an Equal Pay Act claim. (10 minutes)

5. Waters (CA): Clarifies that the studies conducted by the Department of Labor concerning the elimination of pay disparities between men and women must include information about, and an

analysis of, women of all racial and ethnic backgrounds. (10 minutes)

6. Vargas (CA): Prohibits an employer when determining salary from considering: 1) leave used to care for children; or 2) whether or not an employee has children. (10 minutes)

7. Beyer (VA): Exempts employers with fewer than 100 employees from reporting compensation data under Section 8 of this Act. (10 minutes)

8. Lawrence (MI): Requires the Department of Labor to conduct a study on the gender pay gap in the teenage workforce and provide recommendations for how to address the gap. (10 minutes)

9. Brown (MD): Makes it unlawful to discriminate against an employee for inquiring or discussing with the employer why the wages of the employee are set at a certain rate or salary. (10 minutes)

PART A—TEXT OF AMENDMENT CONSIDERED AS ADOPTED

In subsection (f) of section 709 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–8), as proposed to be added by section 8—

(1) in paragraph (1)—

(A) strike “issue regulations to”; and

(B) strike “national origin” and insert “ethnic identity”;

and

(2) add at the end the following:

“(3)(A) For each 12-month reporting period for an employer, the compensation data collected under paragraph (1) shall include, for each range of taxable compensation described in subparagraph (B), disaggregated by the categories described in subparagraph (E)—

“(i) the number of employees of the employer who earn taxable compensation in an amount that falls within such taxable compensation range; and

“(ii) the total number of hours worked by such employees.

“(B) Subject to adjustment under subparagraph (C), the taxable compensation ranges described in this subparagraph are as follows:

“(i) Not more than \$19,239.

“(ii) Not less than \$19,240 and not more than \$24,439.

“(iii) Not less than \$24,440 and not more than \$30,679.

“(iv) Not less than \$30,680 and not more than \$38,999.

“(v) Not less than \$39,000 and not more than \$49,919.

“(vi) Not less than \$49,920 and not more than \$62,919.

“(vii) Not less than \$62,920 and not more than \$80,079.

“(viii) Not less than \$80,080 and not more than \$101,919.

“(ix) Not less than \$101,920 and not more than \$128,959.

“(x) Not less than \$128,960 and not more than \$163,799.

“(xi) Not less than \$163,800 and not more than \$207,999.

“(xii) Not less than \$208,000.

“(C) The Commission may adjust the taxable compensation ranges under subparagraph (B)—

- “(i) if the Commission determines that such adjustment is necessary to enhance enforcement of Federal laws prohibiting pay discrimination; or
- “(ii) for inflation, in consultation with the Bureau of Labor Statistics.
- “(D) In collecting data described in subparagraph (A)(ii), the Commission shall provide that, with respect to an employee who the employer is not required to compensate for overtime employment under section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207), an employer may report—
 - “(i) in the case of a full-time employee, that such employee works 40 hours per week, and in the case of a part-time employee, that such employee works 20 hours per week; or
 - “(ii) the actual number of hours worked by such employee.
- “(E) The categories described in this subparagraph shall be determined by the Commission and shall include—
 - “(i) race;
 - “(ii) ethnic identity;
 - “(iii) sex; and
 - “(iv) job categories, including the job categories described in the instructions for the Equal Employment Opportunity Employer Information Report EEO-1, as in effect on the date of the enactment of this subsection.
- “(F) The Commission shall use the compensation data collected under paragraph (1)—
 - “(i) to enhance—
 - “(I) the investigation of charges filed under section 706 or section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)); and
 - “(II) the allocation of resources to investigate such charges; and
 - “(ii) for any other purpose that the Commission determines appropriate.
- “(G) The Commission shall annually make publicly available aggregate compensation data collected under paragraph (1) for the categories described in subparagraph (E), disaggregated by industry, occupation, and core based statistical area (as defined by the Office of Management and Budget).”.

PART B—TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FOXX OF NORTH CAROLINA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 8.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TORRES OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 1, line 12, add at the end the following: “Pay disparities are especially severe for women and girls of color.”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TORRES OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 14, line 3, insert “, with specific attention paid to women and girls from historically underrepresented and minority groups” after “disparities”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BYRNE OF ALABAMA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Amend section 3(a)(2) to read as follows:

(2) by striking “any other factor other than sex” and inserting “a bona fide business-related reason other than sex”; and Page 6, strike lines 9 through 20.
Page 6, line 21, strike “(C)” and insert “(B)”.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATERS OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 13, line 23, insert after “women” the following: “(including women who are Asian American, Black or African-American, Hispanic American or Latino, Native American or Alaska Native, Native Hawaiian or Pacific Islander, and White American)”.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE VARGAS OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 6, line 20, insert before the period the following: “, nor shall such defense apply if the defense is related to or derived from the use of leave provided by the employer to similarly situated employees or otherwise authorized by Federal, State or local law (such as leave authorized under the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.)), or if such defense is related to or derived from whether or not an employee has children”.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BEYER OF VIRGINIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In subsection (f) of section 709 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-8), as proposed to be added by section 8, add at the end the following:

“(3) The compensation data under paragraph (1) shall be collected from each employer that—

“(A) is a private employer that has 100 or more employees, including such an employer that is a contractor with the Federal Government, or a subcontractor at any tier thereof; or

“(B) the Commission determines appropriate.”.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LAWRENCE OF MICHIGAN OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 6, strike “Not later than” and insert “(a) IN GENERAL.—Not later than”.

In section 6, add at the end the following:

(b) REPORT ON GENDER PAY GAP IN TEENAGE LABOR FORCE.—

(1) REPORT REQUIRED.—Not later than one year after the date of the enactment of this Act, the Secretary of Labor, acting through the Director of the Women’s Bureau and in coordination with the Commissioner of Labor Statistics, shall—

(A) submit to Congress a report on the gender pay gap in the teenage labor force; and

(B) make the report available on a publicly accessible website of the Department of Labor.

(2) ELEMENTS.—The report under subsection (a) shall include the following:

(A) An examination of trends and potential solutions relating to the teenage gender pay gap.

(B) An examination of how the teenage gender pay gap potentially translates into greater wage gaps in the overall labor force.

(C) An examination of overall lifetime earnings and losses for informal and formal jobs for women, including women of color.

(D) An examination of the teenage gender pay gap, including a comparison of the average amount earned by males and females, respectively, in informal jobs, such as babysitting and other freelance jobs, as well as formal jobs, such as retail, restaurant, and customer service.

(E) A comparison of —

(i) the types of tasks typically performed by women from the teenage years through adulthood within certain informal jobs, such as babysitting and other freelance jobs, and formal jobs, such as retail, restaurant, and customer service; and

(ii) the types of tasks performed by younger males in such positions.

(F) Interviews and surveys with workers and employers relating to early gender-based pay discrepancies.

(G) Recommendations for—

(i) addressing pay inequality for women from the teenage years through adulthood, including such women of color;

(ii) addressing any disadvantages experienced by young women with respect to work experience and professional development;

(iii) the development of standards and best practices for workers and employees to ensure better pay for young women and the prevention of early inequalities in the workplace; and

(iv) expanding awareness for teenage girls on pay rates and employment rights in order to reduce greater inequalities in the overall labor force.

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BROWN OF
MARYLAND OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 7, line 23, insert after “employee” the following: “(such as by inquiring or discussing with the employer why the wages of the employee are set at a certain rate or salary)”.

