

To the office of U.S. Representative Eleanor Holmes Norton

Re: HR 8663 (119th Congress), Fair Pay Act of 2026 • Latest action (2026-05-04): Referred to the House Committee on Education and Workforce.

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Office of record (Congress.gov): 2136 Rayburn House Office Building, Washington, DC • (202) 225-8050

Interstate Fair Pay Standards Act

The measure, as described from the official record: Prohibit discrimination in wage payments based on sex, race, or national origin by amending the Fair Labor Standards Act.

THE PROPOSAL

This Act amends the Fair Labor Standards Act of 1938 (FLSA) by adding a new section 7A, which prohibits any employer covered under FLSA Section 3(s)—those with annual gross sales over \$500,000 engaged in interstate commerce or producing goods for commerce—from paying unequal wages to employees for substantially equal work on jobs requiring equal skill, effort, responsibility, and working conditions, when the unequal pay is based on sex, race, or national origin.

The prohibition applies only to employees engaged in commerce or handling goods produced for commerce, as defined in FLSA Sections 3(b), 3(j), and 3(s). Employers must maintain records of wages, job classifications, and bases for pay differences for 3 years, available for Secretary of Labor inspection.

Violations trigger the same enforcement as FLSA minimum wage breaches: employee lawsuits for back wages plus liquidated damages, Department of Labor (DOL) investigations, and civil penalties up to \$1,000 per violation. No private right of action for punitive damages; remedies limited to equitable relief.

DOL must issue guidance within 90 days clarifying application to covered employers only. States retain full authority over intrastate employers not meeting FLSA commerce thresholds.

Annual reports to Congress detail enforcement actions, cases by protected class, and commerce nexus verification.

OPERATIVE PROVISIONS (VFA PROPOSAL)

Funding Source	New appropriation from general Treasury funds, offset by 1% reduction in non-essential DOL administrative overhead
Funding Amount	\$15 million annually (capped, inflation-adjusted)
Sunset Years	8 years
Oversight Body	DOL Inspector General with semiannual reports to House Education & Workforce and Senate HELP Committees

Enforcement Mechanism	DOL Wage and Hour Division investigations, triggered by complaints or audits; civil penalties and back pay recovery via administrative law judges
Effective Date	January 1 of the year following enactment

CONSTITUTIONAL BASIS

- Article I, Section 8, Clause 3 (regulates commerce among states and enterprises affecting it)
- Tenth Amendment (reserves intrastate wage regulation to states)
- Fifth Amendment Due Process (limits remedies to equitable relief with notice and hearing)

Concerns with the measure as written:

- Applies potentially beyond enterprises affecting interstate commerce, risking Tenth Amendment violation by intruding on state labor regulation
 - Lacks explicit limits tying prohibitions to Commerce Clause scope under Article I, Section 8, Clause 3
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WHY BOTH SIDES CAN BACK IT (VFA'S ASSESSMENT)

Honors Democratic priorities of expanding pay equity protections for women and minorities with strong remedies; honors Republican priorities of strict limits to Commerce Clause enterprises only (excluding small/intrastate businesses and states), low-cost enforcement cap, sunset for review, and no new mandates on non-federal actors.

Values for America is a nonpartisan, constitution-first SI think tank. This brief is informational. It is a policy proposal, not law, and it does not support or oppose any candidate or party. Full analysis and sources:

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