

At a Glance

H.R. 7, Paycheck Fairness Act

As ordered reported by the House Committee on Education and Labor on March 24, 2021

| By Fiscal Year, Millions of Dollars | 2021 | 2021-2026 | 2021-2031 |
|--|------|-----------|---------------|
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | * | * |
| Increase or Decrease (-) in the Deficit | 0 | * | * |
| Spending Subject to Appropriation (Outlays) | * | 50 | not estimated |

| | | | |
|--|-----|-------------------------------------|-----------------------------|
| Statutory pay-as-you-go procedures apply? | Yes | Mandate Effects | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032? | No | Contains intergovernmental mandate? | Yes, Under Threshold |
| | | Contains private-sector mandate? | Yes, Over Threshold |

* = between -\$500,000 and \$500,000.

The bill would

- Amend federal statutes governing labor standards and wage discrimination
- Increase civil penalties for violations of equal pay provisions
- Authorize appropriations for research, education, public outreach, and data collection
- Restrict employers' use of wage, salary, and benefit history, and increase their reporting requirements

Estimated budgetary effects would mainly stem from

- Authorizing appropriations for the Department of Labor and the Equal Employment Opportunity Commission to undertake various activities to address wage discrimination

Detailed estimate begins on the next page.

Bill Summary

H.R. 7 would revise the equal pay provisions of the Fair Labor Standards Act, which prohibits wage discrimination on the basis of sex; it also would increase civil penalties for violations of those provisions. Specifically, H.R. 7 would impose higher civil penalties for wage discrimination, restrict the use of the bona fide factor defense for wage discrimination claims, enhance prohibitions against retaliation, and prohibit contracts that prevent employees from disclosing their wages. It also would prohibit employers from relying on wage history in considering a job application, seeking an applicant’s wage history before an offer of employment is made, and using wage history to set a new employee’s wages. Finally, the bill would authorize the appropriation of whatever amounts are necessary for the Department of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC) to enforce the bill’s provisions and to engage in research, outreach, and education.

Estimated Federal Cost

The estimated budgetary effect of H.R. 7 is shown in Table 1. The costs of the legislation fall within budget functions 500 (education, training, employment, and social services) and 750 (administration of justice).

Table 1.
Estimated Increases in Spending Subject to Appropriation Under H.R. 7

| | By Fiscal Year, Millions of Dollars | | | | | | 2021-2026 |
|---|-------------------------------------|------|------|------|------|------|-----------|
| | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | |
| Department of Labor | | | | | | | |
| Estimated Authorization | 0 | 10 | 8 | 8 | 8 | 8 | 42 |
| Estimated Outlays | 0 | 8 | 7 | 7 | 8 | 8 | 38 |
| Equal Employment Opportunity Commission | | | | | | | |
| Estimated Authorization | * | 3 | 3 | 3 | 2 | 2 | 13 |
| Estimated Outlays | * | 2 | 3 | 3 | 2 | 2 | 12 |
| Total Changes | | | | | | | |
| Estimated Authorization | * | 13 | 11 | 11 | 10 | 10 | 55 |
| Estimated Outlays | * | 10 | 10 | 10 | 10 | 10 | 50 |

Enacting the bill also would increase revenues by an insignificant amount over the 2021-2031 period.

Basis of Estimate

CBO assumes that the bill will be enacted in fiscal year 2021 and that the estimated amounts will be appropriated for each fiscal year. Estimated spending is based on historical patterns for similar activities. CBO estimates that under H.R. 7, DOL and the EEOC would require total appropriations of \$55 million, resulting in outlays of \$50 million, over the 2021-2026 period.

H.R. 7 would require DOL to undertake several activities. Using information from the department, and assuming appropriation of the estimated amounts, CBO estimates that outlays for those activities would total \$38 million over the 2021-2026 period:

- \$22 million for various activities by the Office of Federal Contract Compliance Programs, including enforcement and the collection of employment-related data from federal contractors;
- \$10 million for DOL to conduct research, publish educational materials, and sponsor educational programs about wage discrimination;
- \$4 million for a program of competitive grants for state, local, and community organizations to train women and girls in negotiation skills; and
- \$2 million to establish an annual National Award for Pay Equity in the Workplace.

H.R. 7 also would direct the EEOC to provide training concerning wage discrimination, help small businesses comply with the bill's requirements, and collect wage data from certain employers. CBO anticipates that the EEOC would investigate more cases than it does under current law, and estimates that training, data collection, and enforcement efforts would cost \$2.5 million each year for total outlays of \$12 million over the 2021-2026 period.

Pay-As-You-Go Considerations

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting H.R. 7 would increase federal revenues from the collection of new civil penalties. However, CBO estimates that those collections would be insignificant because we expect that the EEOC would resolve and collect penalties in only a small number of cases. In addition, how employers would respond to the bill's provisions is uncertain. Revenues could be higher or lower depending on those responses.

Increase in Long-Term Deficits: None.**Mandates**

H.R. 7 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the public-sector mandate would be below the annual threshold for intergovernmental mandates established by UMRA (\$85 million in 2021, adjusted annually for inflation). CBO estimates that the aggregate cost of complying with the private-sector mandates would exceed the annual threshold established in UMRA (\$170 million in 2021, adjusted annually for inflation).

CBO has not reviewed section 2 of H.R. 7 for intergovernmental or private-sector mandates. Section 4 of UMRA excludes from the application of that act any legislative provisions that would establish or enforce statutory rights prohibiting discrimination. CBO has determined that section 2 of H.R. 7 falls within the exclusion because it would enforce protections against discrimination on the basis of sex, gender, sexual orientation and identity, pregnancy, and childbirth.

Mandate That Applies Both to Public and Private Entities

Section 9 of the bill would prohibit public and private employers from relying on wage history in hiring decisions, seeking an applicant's wage history before an offer of employment is made, using wage history to set a prospective employee's wages, and retaliating against employees for seeking protections against prohibited actions.

Those restrictions would not require any action by or directly impose any significant cost on mandated employers.

Mandates That Apply to Private-Sector Entities Only

Section 7 would require the EEOC to issue regulations requiring large private-sector employers to report data annually on worker compensation and on actual hours worked, disaggregated by sex, race, and national origin. In 2016, the EEOC issued a similar rule that required employers to report the same data. That rule faced legal challenges and eventually a court ordered the EEOC to collect the data for 2017 and 2018. In 2019, the commission issued a notice that the burden on employers was too high and discontinued the collection. By putting this requirement in statute, H.R. 7 would impose a private-sector mandate on employers with 100 employees or more.

CBO estimates that about 90,000 private-sector employers would be required to comply with the provision at a total annual cost in the low hundreds of millions of dollars. That cost would be higher in the first year because some employers would invest in or update software for data collection and management. CBO based its estimate on the data-

reporting requirements in the EEOC's 2016 rule and on information from other federal and private-sector sources.

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