



Up for discussion once again is the Paycheck Fairness Act

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A bill to amend the Fair Labor Standards Act of 1938 and Equal Pay Act of 1963 was passed by the US House of Representatives on March 27, in a 242 – 187 vote. Once again, the bill was passed by the house but held up at the Senate level; **yes you are right... this is old news... same thing has been occurring since 1997.**

Purpose of the Bill?

The purpose is to provide better protections against wage discrimination and hold employers accountable to paying employees fairly and equitably. If the bill is signed into law, employers will be affected in the following ways:

- Employers will be barred from asking job candidates about their salary history;
- Employers will be banned from retaliation against employees who discuss wages with each other;
- Employers will need to prove that any discrepancies in compensation between men and women are legitimate and are based on previous experience, years of service and performance.

In addition, the legislation would remove obstacles that would make it difficult for employees to file class action lawsuits over discrimination in pay. It would also establish grants for training programs that teach employees, females in particular, how to negotiate compensation packages.



The gap between wages based on gender has existed for a long time. This legislation has been introduced many times since 1997. In 2017, the Bureau of Labor Statistics reported that since 2004, the ratio of women to men's earnings has held steady in the 80 – 83% range.

While the House agrees that paying employees less on the basis of sex is wrong, McCloskey Partners is not clear how the bill will really help women. Our concern is that a lot of time will be spent arguing and defending lawsuits and there will be excessive litigation.

To avoid having to defend employment related decisions, we are urging employers to stay ahead of this bill. Do the right thing NOW!

McCloskey Partners anticipates continued debate over the merits of the bill and unfortunately, we assume the bill will continue to stall in the Senate.

Putting aside that the bill is likely to stall, **McCloskey Partners is recommending that companies make changes to their hiring and compensation management protocols now.** Not because there is a bill that may or may not get passed, but because treating employees fairly, regardless of sex, is the right thing to do.

- Instead of asking a candidate what they are currently making in terms of compensation, ask them *“what rate of pay are you requesting in your next position?”*
- Review your handbooks and ensure there is no language that communicates disciplinary action will be taken against employees that discuss wages with each other.
- Ensure there is no language on employment applications that communicates employees cannot share compensation rates with each other OR sections of the application that ask employees to add their hourly rate/ salary history.
- Update job descriptions to include “Physical Requirements” and clearly communicate what is expected of the employee. If a position has a requirement that someone must be able to lift up to X pounds, ensure that requirement is clearly identified in the job description. Review job descriptions annually to ensure they are kept up to date as positions change and evolve over time.
- Use a third party to conduct biannual compensation market reviews to ensure your pay practices are at least meeting the market and competitive. Set the pay range for each position before you start the interview process.