

## EFFECT OF OTHER LAWS

*SEC. 9. No employer to whom section 4 applies shall be required to comply with any law of any State, or political subdivision thereof, prohibiting discrimination in rates of pay on account of sex. The Secretary is empowered by agreement with any agency of any State to cede to such agency jurisdiction over any cases where such State has a statute applicable to the determination of such cases the provisions of which are not inconsistent with the corresponding provisions of this Act or has received a construction not inconsistent therewith.*

## APPROPRIATION

**SEC. 9. 10.** There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

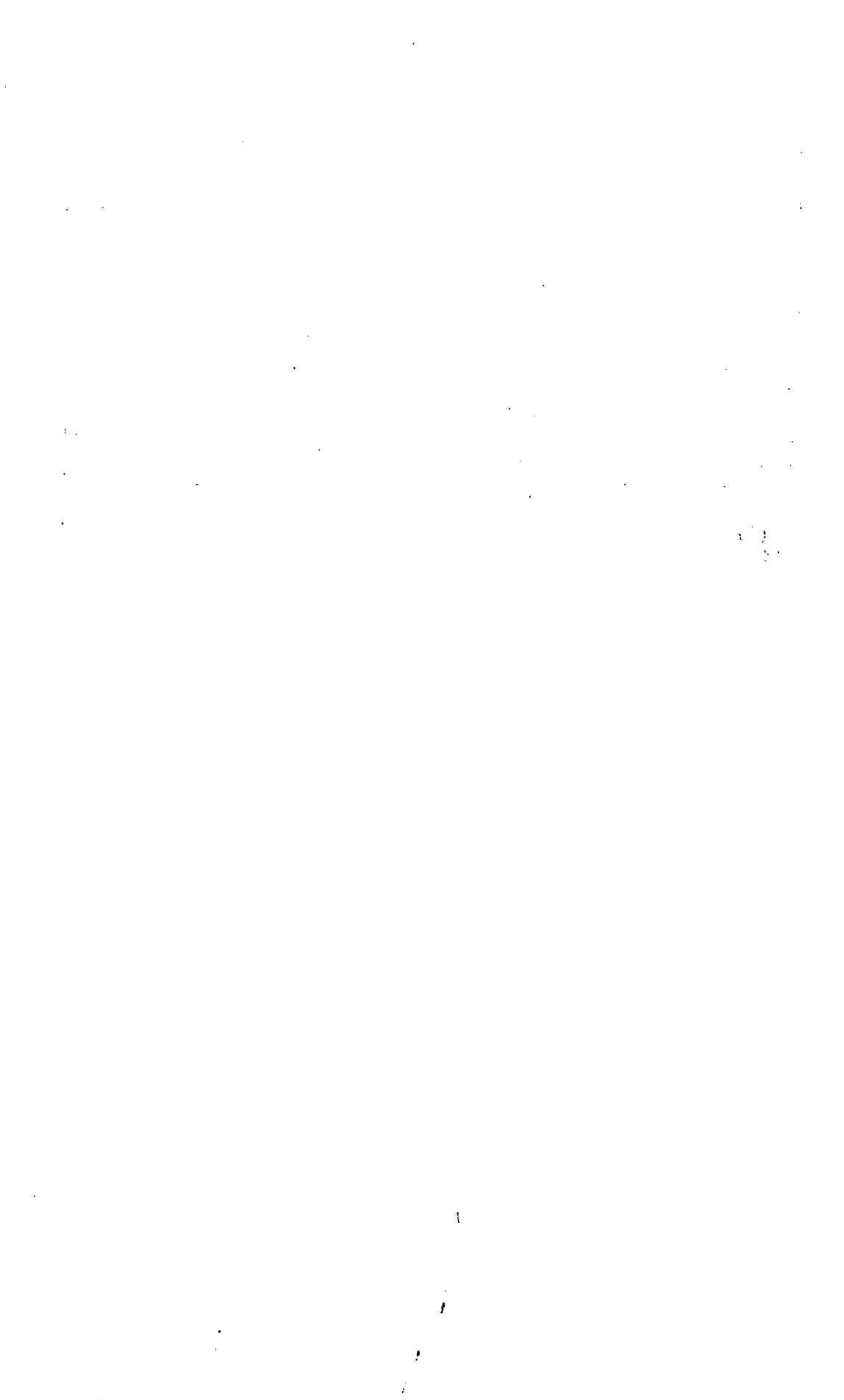
## EFFECTIVE DATE

**SEC. 10. 11.** This Act shall take effect one hundred and twenty days after the date of its enactment.

**Mr. THOMPSON.** The subcommittee will adjourn until tomorrow morning at 9:45 at which time our first witness will be Sonia Pressman representing the American Civil Liberties Union.

Miss Pressman, thank you for waiting until tomorrow. I am sorry it worked out this way.

(Whereupon, at 12:05 p.m., the subcommittee recessed, to reconvene at 9:45 a.m., Wednesday, March 27, 1963.)



# EQUAL PAY ACT

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WEDNESDAY, MARCH 27, 1963

HOUSE OF REPRESENTATIVES,  
SPECIAL SUBCOMMITTEE ON LABOR  
OF THE COMMITTEE ON EDUCATION AND LABOR,  
*Washington, D.C.*

The subcommittee met at 10:05 a.m., pursuant to recess, in room 429, Cannon Office Building, Hon. Frank Thompson, Jr., presiding.

Present: Representatives Thompson (presiding), O'Hara, Sickles, Ashbrook, and Taft.

Also present: Representative Goodell.

Staff members present: Robert E. McCord, subcommittee director, and Richard Burress, minority clerk and counsel.

Mr. THOMPSON. The first witness this morning will be Sonia Pressman and Lawrence Speisser, of the American Civil Liberties Union.

Good morning. Please proceed as you wish. Once again, our apologies for bringing you back here today.

## **STATEMENT OF SONIA PRESSMAN, ATTORNEY, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION; ACCOMPANIED BY LAWRENCE SPEISSER, AMERICAN CIVIL LIBERTIES UNION**

Miss PRESSMAN. That is quite all right. It is a pleasure to be here twice.

I prefer to make a statement and then I shall be glad to answer any question.

My name is Sonia Pressman, an attorney, and I am here today on behalf of the American Civil Liberties Union in support of H.R. 3861, which would prohibit discrimination against women by providing that they receive for the same work as men, the same pay as men.

Our concept of civil liberties has broadened since the day when a Bill of Rights was passed to protect Americans from their Government.

In those days, the primary concern in setting forth specific rights of citizens was to insure that they were to be forever free of Government encroachment; today this concern has also been expanded to include an affirmative obligation on the part of the Government to protect these rights from encroachment by others. We think that the right of women to work on an equal basis with men is not among the least of these.

The administration's proposal is H.R. 3861, introduced in the House by Congresswoman Edith Green, of Oregon, a member of the President's Commission on the Status of Women.

In essence, H.R. 3861 provides that any employer of 25 or more employees who is engaged in commerce shall compensate all his em-

ployees equally for equal work on jobs requiring equal skills, and contains a 2-year period within which all wage rate differentials shall gradually be eliminated; the Secretary of Labor is given authority to prescribe regulations and conduct investigations in connection with his administration of the act; prior to taking any formal action, he is instructed to attempt to eliminate discriminatory practices by informal methods of conference conciliation, and persuasion; only when such methods fail, and a violation is found to exist, is he authorized, after notice and hearing in accordance with the Administrative Procedures Act, to issue a cease and desist order requiring restitution of wages with an additional amount as liquidated damages not to exceed the back pay; he may, moreover, order the reinstatement to employment and the restitution of wages for discharge or other discrimination taken against employees for their invocation of the protections of the act.

He may appeal to the Federal district court which has jurisdiction over the violation or the employer for appropriate temporary relief or a restraining order, and to secure enforcement of his orders. The employer may likewise appeal to the district court for review.

Special provisions are included for those contracting with the U.S. Government in amounts exceeding \$10,000.

This then is H.R. 3861—a bill which is novel neither in its purposes nor in its methods. The prohibition against discrimination for unjustifiable reasons has long been a part of this Nation's heritage.

The 14th amendment to our Constitution provides that no State shall deny to any person within its jurisdiction the equal protection of the laws. The Supreme Court, in interpreting that amendment, the Congress, in passing civil rights legislation, and the municipalities and States, in enacting fair employment practices measures, have all reaffirmed the principle that discrimination for reasons of race, religion, creed, or national origins is abhorrent to our concept of democracy.

H.R. 3861 is an attempt to give to women, who constitute the majority of our population, the same rights which have already been given to our various minority groups in this limited field.

In its passage of the Wagner Act, Congress again demonstrated its opposition to discrimination for irrelevant reasons, the discrimination in that instance being based on whether or not the individual involved chose to affiliate himself with a labor organization. Congress has thus seen fit to protect the individual who voluntarily chose to affiliate himself with an organization. Shouldn't it likewise protect the individual who without any volitional action on her part finds herself in an association—an association based on sex?

Not only do we have precedent for passage of a bill prohibiting discrimination; we even have precedent for passage of a bill providing for equal pay for women. This principle is already a part of the Federal Civil Service law and other similar laws relating to Federal employees.

Women, particularly in the professions, are drawn to Government because of its reputation for nondiscriminatory practices. We don't believe the United States has suffered for having them in its ranks. H.R. 3861 is, then, no more than an attempt to give to women in industry and commerce those rights already enjoyed by women employed by the Federal Government.

As stated above, there is nothing novel about the procedure established in H.R. 3861. Many of them can be traced to antecedents in other bills. The authority given to the Secretary of Labor to conduct investigations and initiate proceedings is similar to that granted to him by the Fair Labor Standards Act of 1938 for the regulation of wages, hours, and other conditions of employment and the Landrum-Griffin amendment.

Similar authority is granted to Fair Employment Practices Commissions under some of the FEPC bills. In those statutes, as in H.R. 3861, the purpose of such provisions is to guarantee that those employees for whose benefit the particular act was passed are actually protected by it.

Some of the FEPC legislation provides, in addition, for the investigation of complaints filed by individual employees. In this connection, it might be noted that H.R. 298, introduced by Congressman Bow; H.R. 409, introduced by Congressman Roosevelt; and H.R. 644, introduced by Congressman Multer, all provide that the machinery of the act may be set in motion, not only upon the Secretary's initiative, but also upon the filing of an affidavit on behalf of the aggrieved party or a charge.

It might be well for H.R. 3861 to be amended so as to include this alternative method.

The restitution of wages provided for by H.R. 3861 is familiar as a remedy for discrimination or unlawful wage patterns under the National Labor Relations Act. The Fair Labor Standards Act, like H.R. 3861, has provisions for the payment of liquidated damages in addition to back pay.

The provision that the Secretary first attempt to secure settlement is to be found in many of the FEPC bills. In addition, many of the State FEPC statutes provide that what takes place during the conference on conciliation shall be strictly confidential. Perhaps such a clause could be inserted into H.R. 3861 to give this additional protection to employers.

One could go on and on enumerating precedents for the procedures contained in H.R. 3861. The administrative proceeding conducted in conformance with the Administrative Procedure Act, the Secretary's right to appeal to the district court for temporary restraining orders and enforcement of his orders, the employer's right of review, the special provisions for Government contractors—all of these may be found in one or more of the other statutes discussed above.

In addition, the Fair Labor Standards Act and some of the FEPC bills carry criminal penalties with fines up to \$10,000 or imprisonment or both. Putting teeth such as these into H.R. 3861 might prove an effective measure in securing compliance with its terms.

We have, then, here nothing new or radical to propose. We simply ask that those methods which have been found meritorious to combat discrimination based on race, religion, creed, national origins, and union membership be applied to an area where discrimination is equally invidious—discrimination based on sex.

The marvel is not that a bill like H.R. 3861 is up for passage by this Congress but that its merits must still be debated long after so many other similar measures have become an accepted part of the American system.

This is all the more remarkable since H.R. 3861 is only a first step in equalizing employment opportunities for women in this country. It will, of course, assist the approximately 24 million working women to secure equitable compensation on the jobs they now have. But it will not assist them in being considered on an equal basis with men when opportunities for transfers or promotions arise.

Nor does this bill offer any relief to the millions of unemployed women of working age in this country today, many of whom remain unemployed because discriminatory employment practices based on sex are so widespread. And in this era of the cold war, we cannot afford to waste any of our human resources.

However, while we feel strongly that legislation which outlaws discriminatory hiring practices is just as vital as legislation which outlaws discriminatory wage policies, we support H.R. 3861 as a move in the right direction of equalizing women's rights. We think that what is significant about this bill is that it only provides equal pay for equal work.

There are, of course, some who contend that women never can perform work equivalent to that of men on the grounds that women are intellectually and emotionally inferior to men, and it costs more to employ women because they take more sick leave and are more prone to leave employment because of the demands of marriage and raising a family.

None of these contentions are significantly borne out by the facts.

With regard to sick leave, the latest Public Health Service study, which was conducted for fiscal 1958, showed that the average amount of time out for sickness and injury was 7.5 days a year for women, and 7.2 days a year for men.

With regard to tenure of employment, the result of a 5-year study of factory workers performed, we admit, by the Women's Bureau of the Department of Labor, demonstrated 24 quits per 1,000 women to 18 per 1,000 men. We don't think 6 quits per 1,000 justifies significantly different wage scales.

There is some support for the theory that women are intellectually, emotionally, and even physically superior to men—as reported by Prof. Ashley Montagu in his book, "The Natural Superiority of Women." However, we don't suggest in the light of this that legislation be passed requiring a higher wage scale for women than men.

Mr. THOMPSON. That will be the next one.

Miss PRESSMAN. We have to start somewhere.

All we ask is for equality of treatment, nothing more, nothing less.

Mr. THOMPSON. Now.

Miss PRESSMAN. Of course, no one would contend that women can perform all jobs, such as those requiring masculine brawn, as well as men, any more than men can perform all jobs as well as women. Even the American Civil Liberties Union is aware of the distinctions between the sexes and joins the French in saying "Vive la difference." But let's face it, gentlemen, that "difference" isn't really the significant factor in the performance of most jobs. Except for the oldest profession, it rarely comes into play until after regular working hours.

As with any socially desirable legislation, the argument will be made that Congress has no business passing laws to combat an evil

that lies in the minds and hearts of people—and that we must wait until education and greater insight and, perhaps, the Messiah, will change mankind.

We agree that statutes do not at the moment of their passage effectuate changes in the individuals whose conduct they attempt to regulate. But legislation does have a very definite effect on the climate of opinion, and this in turn does play upon the minds and hearts of the people.

Congress has a role to play in this area. If an employer pays some of his employees less money than others for equal work because they belong to a union, he knows that he does so in violation of the laws of the United States.

If an employer pays some of his employees less money for equal work because they are women, let him likewise know that he is in violation of the laws of the United States.

Samuel Johnson is reported to have said in the 18th century, "Nature has given woman so much power that the law cannot afford to give her more." I would ask you to consider whether, in this 20th century, it might not be more appropriate to say, "Nature has given woman so much power that the law cannot afford to give her less."

Mr. THOMPSON. Thank you. That might make a good preamble for the bill, "Whereas nature has given women so much power that the law cannot afford to give her less." That is a fine statement.

Mr. Sickles, do you have any questions?

Mr. SICKLES. I have no questions, Mr. Chairman.

Mr. THOMPSON. I am glad that you included absenteeism and quit statistics. I have been getting a bit weary of pious assertions from employers of women to the effect that it costs so much more to hire a woman. They only tell half of the economic story, of course, and only by questioning in this department can we realize that actually there is—you use the word "discrimination" which is accurate I suppose, in the light of what I have heard I prefer to use the word "exploitation"—it costs so much more they say because women live longer and are harder to train.

When they tell you that pension plans call for more, they don't tell you that of course these plans are actuarially worked out and any differentials are picked up in the establishment of the rates.

If we accept the figures of one of the employers who was here, there is a differential in cost according to many of 30 cents per hour to hire a woman and yet he pays them 72 cents less than he does the men. So, he makes himself a 42-cent-per-hour net profit.

Now, somewhere along the line these people are going to have to realize that anyone can do tricks with statistics but that after hearing them, a great number of times I think it is obvious that those aren't very sound arguments.

There can be, I suppose, arguments made with respect to the difficulties of administering a law such as this. The statement that it might be difficult to do is probably true, but I think it is entirely possible this will not be by any means the most difficult law that Congress has passed.

Thank you very much for your statement.

Miss PRESSMAN. Thank you, Mr. Chairman.