

At a Glance

S. 728, Paycheck Fairness Act

As reported by the Senate Committee on Health, Education, Labor, and Pensions on July 18, 2023

By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	*	*
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	53	not estimated

Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	Yes
Mandate Effects			
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	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
- Make employers liable for compensatory and punitive damages for certain 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
- Allowing new civil penalties to be collected

Detailed estimate begins on the next page.

See also

[CBO's Cost Estimates Explained](#), [CBO Describes Its Cost-Estimating Process](#), [Glossary](#)



Bill Summary

S. 728 would revise the equal pay provisions of the Fair Labor Standards Act, which prohibits wage discrimination on the basis of sex and would impose additional penalties for violations of those provisions. Specifically, S. 728 would make employers liable for compensatory and punitive damages in certain cases of 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. Violators of those new prohibitions would be subject to civil monetary penalties. 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 S. 728 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 S. 728							
	By Fiscal Year, Millions of Dollars						2023-2028
	2023	2024	2025	2026	2027	2028	
Department of Labor							
Estimated Authorization	0	11	9	9	9	9	47
Estimated Outlays	0	8	8	8	8	8	40
Equal Employment Opportunity Commission							
Estimated Authorization	0	3	3	3	2	2	13
Estimated Outlays	0	3	3	3	2	2	13
Total Changes							
Estimated Authorization	0	14	12	12	11	11	60
Estimated Outlays	0	11	11	11	10	10	53

Enacting the bill also would increase revenues by an insignificant amount over the 2023-2033 period.

Basis of Estimate

CBO assumes that the bill will be enacted near the end of fiscal year 2023 and that the estimated amounts will be provided for each fiscal year. Estimated spending is based on historical patterns for similar activities.



Department of Labor

S. 728 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 \$40 million over the 2023-2028 period:

- \$21 million for activities by the Office of Federal Contract Compliance Programs, including enforcement and collection of employment-related data from federal contractors;
- \$13 million for DOL to research, publish educational materials, and sponsor educational programs about wage discrimination;
- \$4 million for 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.

Equal Employment Opportunity Commission

S. 728 also would direct the EEOC to provide training about wage discrimination, help small businesses comply with the bill's requirements, and collect wage data from certain employers. Additionally, CBO anticipates that the EEOC would investigate more cases of wage discrimination than it does under current law. In total, CBO estimates that the EEOC's training, data collection, and enforcement efforts would cost \$13 million over the 2023-2028 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 S. 728 would increase federal revenues from the collection of new civil penalties. CBO estimates that those collections would be less than \$500,000 in every year and over the 2023-2033 period 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 employer actions under the bill's provisions.

Increase in Long-Term Net Direct Spending and Deficits: None.

Mandates

S. 728 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 the intergovernmental mandates established by UMRA (\$99 million in 2023, 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 (\$198 million in 2023, adjusted annually for inflation).

CBO has not reviewed a provision in section 3 of S. 728 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 this provision falls within that exclusion because it would enforce protections against discrimination based on gender.

Mandate That Applies Both to Public and Private Entities

Section 10 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.

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

Mandates That Apply to Private Entities Only

The bill would make it unlawful to require an employee to sign a contract or waiver prohibiting the employee from disclosing information about the employee's wages. This restriction would not require any action by mandated employers and would not impose any significant direct cost.

Section 8 of the bill would require the EEOC to issue regulations requiring large private-sector employers to report data annually on worker compensation and 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, S. 728 would impose a private-sector mandate on employers with 100 employees or more.

CBO estimates that approximately 80,000 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 this estimate on a 2019 analysis by the EEOC on the estimated cost of compliance, adjusted for inflation.



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