



Legislative Bulletin.....July 31, 2008

Contents:

H.R. 1338—Amendments to the Paycheck Fairness Act

H.R. 1338, the Paycheck Fairness Act (sponsored by Rep. Rosa DeLauro, D-CT, with a Senate companion bill by Senator Hillary Rodham Clinton, D-NY), is scheduled to be considered on the House floor on Thursday, July 31, 2008, subject to a structured rule ([H.Res. 1388](#)), making in order the six amendments summarized below, each debatable for 10 minutes.

The rule waives all points of order against consideration of the bill, except those regarding PAYGO and earmarks, waives all points of order against the bill itself—except the PAYGO rule—and allows the Chair to postpone consideration of the legislation at any time during its consideration. The rule allows one motion to recommit with or without instructions.

Note: The summaries below are based on RSC staff review of *actual amendment text* and thus differ from what's on the Rules Committee website. For a summary of the underlying bill, see a separate RSC document released yesterday.

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AMENDMENTS MADE IN ORDER UNDER THE RULE

1. Bean (D-IL): Strikes the section of the legislation (Section 3(b)) that would apply the employer defense provisions (the provisions requiring employers accused of pay discrimination to demonstrate that a pay differential is not based on sex, is job-related, and is consistent with business necessity) to applicants for employment.

2. Price (R-GA): Conditions the implementation of the employer defense provisions on the Secretary of Labor determining, within 90 days of this bill's enactment, whether such provisions "may significantly hinder employers' recruitment and hiring of employees irrespective of gender." If the Secretary does find evidence for such hindrance, the employer defense provisions (Section 3 of the bill) would never go into effect. If such hindrance is not discovered, the employer defense provisions would become effective 90 days after the Secretary reports its findings to Congress.

3. Altmire (D-PA): Makes the effective date of the entire bill six months after enactment (rather than immediately). The Secretary of Labor and the Commissioner of the Equal Employment Opportunity Commission would have to jointly develop technical assistance materials with

which to assist small businesses in complying with the Fair Labor Standards Act (FLSA) and the amendments made to it by H.R. 1338. The amendment would also clarify that a small business would be exempt from the provisions of H.R. 1338 to the same extent that it is already exempt under the FLSA.

4. Giffords (D-AZ): Provides that an employer can only be liable for *punitive* damages for pay discrimination when the employee demonstrates in court that the employer acted “with malice or reckless indifference.”

5. Cazayoux (D-LA): Clarifies that nothing in this bill would affect the obligation of employers and employees to fully comply with all applicable immigration laws, including any penalties, fines, or other sanctions.

6. Flake (R-AZ): Prohibits any funds appropriated for the female-only negotiation-skills grant program (created by this bill) from being used for congressional earmarks, as defined in clause 9(d) of House Rule XXI.
