

**ADOPTED****AMERICAN BAR ASSOCIATION**

**COMMISSION ON WOMEN IN THE PROFESSION  
COMMISSION ON MENTAL AND PHYSICAL  
DISABILITY LAW**

**COMMISSION ON SEXUAL ORIENTATION AND  
GENDER IDENTITY**

**COUNCIL ON RACIAL AND ETHNIC DIVERSITY  
SECTION OF INDIVIDUAL RIGHTS AND  
RESPONSIBILITIES**

**SECTION OF LITIGATION**

**SENIOR LAWYERS DIVISION**

**BEVERLY HILLS BAR ASSOCIATION**

**NATIONAL LGBT BAR ASSOCIATION**

**BAR ASSOCIATION OF SAN FRANCISCO**

**NEW YORK COUNTY LAWYERS ASSOCIATION**

**PHILADELPHIA BAR ASSOCIATION**

**REPORT TO THE HOUSE OF DELEGATES****RECOMMENDATION**

1 RESOLVED, That the American Bar Association urges  
2 Congress to enact legislation that would provide more  
3 effective remedies, procedures and protections to those  
4 subjected to pay discrimination, including discrimination  
5 on the basis of gender, and would help overcome the  
6 barriers to the elimination of such pay discrimination that

7 continue to exist. Such enhanced remedies and  
8 procedures should include:

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10 1. Allowing prevailing plaintiffs to recover  
11 compensatory and punitive damages in Equal Pay  
12 Act (“EPA”) cases;

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14 2. Enabling an EPA lawsuit to proceed as a class action  
15 pursuant to Rule 23(b)(3) of the Federal Rules of  
16 Civil Procedure;

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18 3. Prohibiting employers from retaliating against  
19 employees for sharing salary information;

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21 4. Permitting an employer to assert an affirmative  
22 defense in an EPA action, only where the pay  
23 differential between men and women is not related to  
24 gender, is related to job performance, and is  
25 consistent with business necessity;

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27 5. Allowing wage comparisons between female and  
28 male employees in facilities within the same county  
29 or similar political subdivision, not merely within the  
30 same facility;

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- 32 6. Enhancing the United States Equal Employment  
33 Opportunity Commission's ability to collect and  
34 survey pay data from employers; and  
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- 36 7. Reinstating the United States Department of Labor's  
37 collection of gender-based data in the Current  
38 Employment Statistics Survey.