

2015 -- S 0721 SUBSTITUTE A

=====
LC000109/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

—————
A N A C T

RELATING TO LABOR AND LABOR RELATIONS -FAIR EMPLOYMENT PRACTICES

Introduced By: Senators Goldin, Paiva Weed, Goodwin, Lynch, and Sosnowski

Date Introduced: March 18, 2015

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings and intent. It is the intent of the general assembly to
2 combat wage discrimination based on sex by strengthening and closing gaps in existing wage
3 discrimination laws.

4 SECTION 2. Sections 28-6-17, 28-6-18, 28-6-19, 28-6-20 and 28-6-21 of the General
5 Laws in Chapter 28-6 entitled "Wage Discrimination Based on Sex" are hereby amended to read
6 as follows:

7 **28-6-17. Definitions. -- As used in this chapter:**

8 (a) "Director" means the director of labor and training.

9 (b) "Employee" ~~as used in §§ 28-6-17—28-6-21~~ means any person ~~employed for hire by~~
10 ~~any employer in any lawful employment, but does not include persons engaged in domestic~~
11 ~~service in the home of the employer, or employees of any social club, fraternal, charitable,~~
12 ~~educational, religious, scientific, or literary association, no part of the net earnings of which~~
13 ~~inures to the benefit of any private individual~~ suffered or permitted to work by an employer,
14 except that independent contractors or subcontractors shall not be considered employees.

15 (c) "Employer" includes any person acting in the interest of an employer directly or
16 indirectly.

17 (d) "Employment" means any employment under contract of hire, expressed or implied,
18 written or oral, including all contracts entered into by helpers and assistants of employees,
19 whether paid by employer or employee, if employed with the knowledge, actual or constructive,

1 of the employer in which all or the greater part of the work is to be performed within the state.

2 **28-6-18. Wage differentials based on sex prohibited.** -- (a) No employer shall
3 discriminate in the payment of wages as between the sexes or shall pay any female in his or her
4 employ salary or wage rates less than the rates paid to male employees for equal work or work on
5 the same operations.

6 (b) Nothing contained in this section shall prohibit a variation in rates of pay based upon
7 either difference in:

8 (1) Seniority, experience, training, skill, or ability;

9 (2) Duties and services performed, either regularly or occasionally;

10 (3) The shift or time of day worked; or

11 (4) Availability for other operations or ~~any other reasonable differentiation except~~
12 ~~difference in sex~~ a bona fide factor other than sex. An employer asserting that differential wages
13 are paid pursuant to this subsection shall demonstrate that the factor:

14 (i) Does not perpetuate a sex-based differential in compensation; and

15 (ii) Is job-related with respect to the position in question and is consistent with business
16 necessity. Such exception under this paragraph shall not apply when the employee demonstrates:

17 (A) That an employer uses a particular employment practice that causes a disparate
18 impact on the basis of sex;

19 (B) That an alternative employment practice exists that would serve the same business
20 purpose and not produce such differential; and

21 (C) That the employer has refused to adopt such alternative practice.

22 (c) For the purpose of subsection (b) of this section, "business necessity" shall mean
23 essential to effective job performance.

24 (d)(1) No employer shall prohibit an employee from inquiring about, discussing, or
25 disclosing the wages of such employee or another employee, or retaliate against an employee who
26 engages in such activities.

27 (2) Nothing in this subsection shall require an employee to disclose his or her wages.

28 (3) This prohibition shall not apply to instances in which an employee who has access to
29 the wage information of other employees as a part of such employee's essential job functions
30 discloses the wages of such other employees to individuals who do not otherwise have access to
31 such information, unless such disclosure is in response to a complaint or charge or in furtherance
32 of an investigation, proceeding, hearing, or action under this chapter, including an investigation
33 conducted by the employer.

34 (4) Nothing in this section shall be construed to limit the rights of an employee provided

1 under any other provision of law or collective bargaining agreement.

2 ~~(e)~~(e) Except as provided in this section, any provision in any contract, agreement, or
3 understanding entered into after passage of this act establishing a variation in rates of pay as
4 between the sexes, shall be null and void.

5 (f) Posting of statutory provisions. – Every employer subject to this chapter shall post in a
6 conspicuous place or places on his or her premises a notice to be prepared or approved by the
7 director, which shall set forth excerpts of this chapter and any other relevant information which
8 the director deems necessary to explain the chapter. Any employer refusing to comply with the
9 provisions of this section shall be punished by a fine of not less than one hundred dollars (\$100)
10 nor more than five hundred dollars (\$500).

11 **28-6-19. Enforcement of provisions. --** (a) The director of labor and training shall have
12 the power and it shall be his or her duty to carry out the provisions of §§ 28-6-17 -- 28-6-21.

13 (b) In carrying out these provisions, the director shall have the same powers and duties as
14 found under chapter 14 of title 28 to investigate, inspect, subpoena, and enforce complaints
15 through administrative hearings.

16 (c) The director shall be entitled to the same rights and remedies as found under chapter
17 14 of title 28 for an employer's effort to obstruct the director and his or her authorized
18 representatives in the performance of their duties or for any person's failure to comply with any
19 lawfully issued subpoena, or subpoena duces tecum, or on the refusal of any witness to testify to
20 any matter regarding which he or she may be lawfully interrogated.

21 (d) The department of labor and training and the commission for human rights shall
22 cooperate in the investigation of charges filed under this section when the allegations are
23 jurisdictional with both agencies.

24 **28-6-20. Civil liability of employer for sex differential -- Actions. --** (a) Any employee
25 or former employee, for and on behalf of himself or herself and other similarly situated
26 employees, or any organization representing such an employee or former employee aggrieved by
27 a violation of § 28-6-18 may file a civil action in any court of competent jurisdiction to obtain
28 relief.

29 ~~(b) An employer who violates the provisions of § 28-6-18 shall be liable to the employee~~
30 ~~or employees affected in the amount of their unpaid wages, and in an additional equal amount of~~
31 ~~liquidated damages.~~ An aggrieved party shall be entitled to recover any unpaid wages and/or
32 benefits, compensatory damages, and liquidated damages in an amount up to three (3) times the
33 amount of unpaid wages and/or benefits owed, exclusive of interest, as well as an award of
34 appropriate equitable relief, including reinstatement of employment, fringe benefits and seniority

1 rights, and reasonable attorneys' fees, including expert fees and other litigation expenses.

2 ~~An action to recover the liability may be maintained in any court of competent~~
3 ~~jurisdiction by any one or more employees for and in behalf of himself or herself or themselves~~
4 ~~and other similarly situated employees. At the request of any employee paid less than the wage to~~
5 ~~which he or she is entitled under §§ 28-6-17 -- 28-6-21, the director of labor and training may~~
6 ~~take an assignment of the wage claim in trust for the assigning employee and may bring any legal~~
7 ~~action necessary to collect the claim, and the liquidated damages provided for above. The director~~
8 ~~of labor and training shall not be required to pay the filing fee or other costs in connection with~~
9 ~~the action. The director of labor and training shall have the power to join various claimants~~
10 ~~against the employer in one cause of action.~~

11 (c) An aggrieved employee or former employer may not file a civil action under this
12 section if he or she has also filed a complaint with the director of labor and training and the
13 director has issued notice of an administrative hearing pursuant to § 28-6-19.

14 (d) The filing of a civil action under this section shall not preclude the director of labor
15 and training from investigating the matter and/or referring the matter to the attorney general.

16 **28-6-21. ~~Penalty for violations~~ Penalty for violations in an administrative proceeding**

17 **under § 28-6-19. -- (a) Any employer who violates any provision of §§ 28-6-17 -- 28-6-21, in**
18 **addition to any other relief to which any department or a complaining party may be entitled for**
19 **such a violation, shall be liable for a civil penalty in an amount up to three hundred percent**
20 **(300%) of the total amount of the wages found to be due, exclusive of interest, which shall be**
21 **payable directly to the complaining party. The order may also direct payment of reasonable**
22 **attorneys' fees and costs to the complaining party. The order may further direct that an**
23 **administrative penalty be paid to the department of labor and training in the amount up to one**
24 **hundred percent (100%) of the total amount of wages found to be due.**

25 (b) In determining the amount of any penalty imposed under this section, the director or
26 his or her designee shall consider the size of the employer's business, the good faith of the
27 employer, the gravity of the violation, the history of previous violations, and whether or not the
28 violation was an innocent mistake or willful.

29 (c) Any employer ~~or~~ who discharges or in any other manner discriminates against any
30 employee because the employee has made any complaint to his or her employer, the director of
31 labor and training, or any other person, or instituted or caused to be instituted any proceeding
32 under or related to §§ 28-6-17 -- 28-6-21, or has testified or is about to testify in any proceeding,
33 shall, upon conviction, be punished by a fine of not more than two hundred dollars (\$200) or by
34 imprisonment for not more than six (6) months, or by both fine and imprisonment.

1 (d) At the request of any employee paid less than the wage to which he or she is entitled
2 under §§ 28-6-17 through 28-6-21, the director of labor and training may take an assignment of
3 the wage claim in trust for the assigning employee and may bring any legal action necessary to
4 collect the claim, and the liquidated damages provided for above. The director of labor and
5 training shall not be required to pay the filing fee or other costs in connection with the action. The
6 director of labor and training shall have the power to join various claimants against the employer
7 in one cause of action.

8 SECTION 3. This act shall take effect upon passage.

=====
LC000109/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS -FAIR EMPLOYMENT PRACTICES

1 This act would provide protections against wage differentials based upon the sex of the
2 employee. The act also provides that where wage differentials do exist, employers must justify
3 said differentials based on bona fide factors other than sex. The act further provides that an
4 aggrieved party shall be entitled to recover any unpaid wages and/or benefits, compensatory
5 damages, and liquidated damages in an amount up to three (3) times the amount of unpaid wages
6 and/or benefits owed, as well as an award of appropriate equitable relief, including reinstatement
7 of employment, fringe benefits and seniority rights.

8 This act would take effect upon passage.

=====
LC000109/SUB A
=====