

2016 -- S 2635

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- FAIR PAY ACT

Introduced By: Senators Goldin, Paiva Weed, Gallo, Lynch Prata, and Goodwin

Date Introduced: February 25, 2016

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

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

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

16           (d) "Employment" means any employment under contract of hire, expressed or implied,  
17 written or oral, including all contracts entered into by helpers and assistants of employees,  
18 whether paid by employer or employee, if employed with the knowledge, actual or constructive,  
19 of the employer in which all or the greater part of the work is to be performed within the state.

1           **28-6-18. Wage differentials based on sex prohibited.** -- (a) No employer shall  
2 discriminate in the payment of wages as between the sexes ~~or shall pay any female in his or her~~  
3 ~~employ salary or wage rates less than the rates paid to male employees~~ for ~~equal work or work on~~  
4 ~~the same operations~~ substantially similar work, when viewed as a composite of skill, effort, and  
5 responsibility, and performed under similar working conditions, except where the employer  
6 makes the showing set out in subsection (b) of this section.

7           (b) ~~Nothing contained in this section shall prohibit a variation in rates of pay based upon~~  
8 ~~either difference in~~ A wage differential is permitted when the employer demonstrates:

- 9           (1) ~~Seniority, experience, training, skill, or ability~~ A seniority system;  
10           (2) ~~Duties and services performed, either regularly or occasionally~~ A merit system;  
11           (3) ~~The shift or time of day worked~~ A system that measures earnings by quantity or  
12 quality of production; or

13           (4) ~~Availability for other operations or any other reasonable differentiation except~~  
14 ~~difference in sex.~~ A bona fide factor other than sex such as education, training, or experience.  
15 This factor shall apply only if the employer demonstrates that the factor is not based on or derived  
16 from a sex-based differential in compensation, is job related with respect to the position in  
17 question, and is consistent with a business necessity. For purposes of this subsection, “business  
18 necessity” shall mean essential to effective job performance. This defense shall not apply if the  
19 employee demonstrates that an alternative business practice exists that would serve the same  
20 business purpose without producing the wage differential; and

- 21           (i) Each factor relied upon is applied reasonably; and  
22           (ii) The factor or factors relied upon account for the entire wage differential.

23           (c)(1) No employer shall prohibit an employee from inquiring about, discussing, or  
24 disclosing the wages of such employee or another employee, or retaliate against an employee who  
25 engages in such activities. An employer shall not prohibit an employee from disclosing the  
26 employee’s own wages, discussing the wages of others, inquiring about another employee’s  
27 wages, or aiding or encouraging any other employee to exercise their rights under this subsection.  
28 Nothing in this subsection creates an employer obligation to disclose wages.

29           (2) Nothing in this subsection shall require an employee to disclose their wages.

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

1 conducted by the employer.

2 (4) Nothing in this section shall be construed to limit the rights of an employee provided  
3 under any other provision of law or collective bargaining agreement.

4 (d) No employer shall discharge or in any other manner discriminate or retaliate against  
5 any employee because the employee has made any complaint to their employer, the director of  
6 labor and training, or any other person, under or related to §§28-6-17 through 28-6-21, or  
7 instituted or caused to be instituted any proceeding under or related to §§28-6-17 through 28-6-  
8 21, or has testified or is about to testify in any such proceeding. No employer shall coerce,  
9 intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on  
10 account of their having exercised or enjoyed, or on account of their having aided or encouraged  
11 any other individual in the exercise or enjoyment of, any right granted or protected by §§28-6-17  
12 through 28-6-21.

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

16 (f) Posting of statutory provisions. – Every employer subject to this chapter shall post in a  
17 conspicuous place or places on their premises a notice to be prepared or approved by the director,  
18 which shall set forth excerpts of this chapter and any other relevant information which the  
19 director deems necessary to explain the chapter. Any employer who does not comply with the  
20 provisions of this section shall be punished by a fine of not less than one hundred dollars (\$100)  
21 nor more than five hundred dollars (\$500).

22 (g) Every employer shall keep a true and accurate record of hours worked and wages paid  
23 each pay period to each employee in any form that may be prescribed by the director. The  
24 employer shall keep the records on file for at least three (3) years after the entry of the record.

25 **28-6-19. Enforcement of provisions. -- (a)** The director of labor and training shall have  
26 the power and it shall be his or her duty to carry out the provisions of §§ 28-6-17 -- 28-6-21.

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

30 (c) The director shall be entitled to the same rights and remedies as found under chapter  
31 14 of title 28 for an employer's effort to obstruct the director and their authorized representatives  
32 in the performance of their duties or for any person's failure to comply with any lawfully issued  
33 subpoena, or subpoena duces tecum, or on the refusal of any witness to testify to any matter  
34 regarding which they may be lawfully interrogated.

1 (d) The department of labor and training and the commission for human rights shall  
2 cooperate in the investigation of charges filed under this section when the allegations are within  
3 the jurisdiction of both agencies.

4 (e) All claims under this chapter must be filed with the director within three (3) years  
5 from the time of the prohibited conduct.

6 **28-6-20. Civil liability of employer for sex differential -- Actions. --** ~~An employer who~~  
7 ~~violates the provisions of § 28-6-18 shall be liable to the employee or employees affected in the~~  
8 ~~amount of their unpaid wages, and in an additional equal amount of liquidated damages. An~~  
9 ~~action to recover the liability may be maintained in any court of competent jurisdiction by any~~  
10 ~~one or more employees for and in behalf of himself or herself or themselves and other similarly~~  
11 ~~situated employees. At the request of any employee paid less than the wage to which he or she is~~  
12 ~~entitled under §§ 28-6-17—28-6-21, the director of labor and training may take an assignment of~~  
13 ~~the wage claim in trust for the assigning employee and may bring any legal action necessary to~~  
14 ~~collect the claim, and the liquidated damages provided for above. The director of labor and~~  
15 ~~training shall not be required to pay the filing fee or other costs in connection with the action. The~~  
16 ~~director of labor and training shall have the power to join various claimants against the employer~~  
17 ~~in one cause of action.~~ (a) Any employee or former employee, for and on behalf of themselves  
18 and other similarly situated employees, or any organization representing such an employee or  
19 former employee, aggrieved by a violation of §28-6-18 may file a civil action in any court of  
20 competent jurisdiction to obtain relief.

21 (b) An aggrieved party shall be entitled to recover any unpaid wages and/or benefits,  
22 compensatory damages, and liquidated damages in an amount up to three (3) times the amount of  
23 unpaid wages and/or benefits owed exclusive of interest, as well as an award of appropriate  
24 equitable relief, including reinstatement of employment, fringe benefits and seniority rights, and  
25 reasonable attorneys' fees, expert fees and other litigation costs.

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

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

31 **28-6-21. ~~Penalty for violations~~ Penalty for violations in an administrative proceeding**  
32 **under §28-6-19. --** ~~Any employer who violates any provision of §§ 28-6-17—28-6-21, or who~~  
33 ~~discharges or in any other manner discriminates against any employee because the employee has~~  
34 ~~made any complaint to his or her employer, the director of labor and training, or any other person,~~

1 ~~or instituted or caused to be instituted any proceeding under or related to §§ 28-6-17 through 28-6-21,~~  
2 ~~or has testified or is about to testify in any proceeding, shall, upon conviction, be punished by a~~  
3 ~~fine of not more than two hundred dollars (\$200) or by imprisonment for not more than six (6)~~  
4 ~~months, or by both fine and imprisonment.~~ (a) Any employer who violates any provision of §§28-  
5 6-17 through 28-6-21, in addition to any other relief to which any department or any aggrieved  
6 party may be entitled for such a violation, shall be liable for a civil penalty in an amount up to  
7 three (3) times the amount of the total wages found to be due, exclusive of interest, which shall be  
8 payable directly to the aggrieved party. The order may also direct payment of reasonable  
9 attorneys' fees and costs to the aggrieved party. The order may further direct that an  
10 administrative penalty be paid to the department of labor and training in the amount up to one  
11 hundred percent (100%) of the total amount of wages found to be due.

12 (b) In determining the amount of any penalty imposed under this section, the director or  
13 their designee, or the department, court, commission, or other body with jurisdiction to hear this  
14 matter, shall consider the size of the employer's business, the good faith of the employer, the  
15 gravity of the violation, the history of previous violations, and whether or not the violation was an  
16 innocent mistake or willful.

17 (c) Any employer who discharges, retaliates, or in any other manner discriminates against  
18 any employee because the employee has made any complaint to their employer, the director of  
19 labor and training, or any other person, or instituted or caused to be instituted any proceeding  
20 under or related to §§28-6-17 through 28-6-21, or has testified or is about to testify in any  
21 proceeding, shall be liable for a civil penalty in an amount not less than five hundred dollars  
22 (\$500) and not greater than three thousand dollars (\$3,000). In determining the amount of any  
23 penalty imposed under this section, the director or their designee shall consider the size of the  
24 employer's business, the good faith of the employer, the gravity of the violation, the history of  
25 previous violations, and whether or not the violation was an innocent mistake or willful.

26 (d) At the request of any employee paid less than the wage to which they are entitled  
27 under §§28-6-17 through 28-6-21, the director of labor and training may take an assignment of  
28 the wage claim in trust for the assigning employee and may bring any legal action necessary to  
29 collect the claim and the liquidated damages as authorized by this chapter. The director of labor  
30 and training shall not be required to pay the filing fee or other costs in connection with the action.  
31 The director of labor and training shall have the power to join various claimants against the  
32 employer in one cause of action.

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

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

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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.

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