

2019 -- H 5917

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WAGE FAIRNESS ACT

Introduced By: Representatives Ruggiero, Donovan, Shekarchi, Blazejewski, and Williams

Date Introduced: March 28, 2019

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings and intent.

2 It is the intent of this general assembly to combat wage discrimination based on race,  
3 color, religion, ethnicity, gender, national origin, sexual orientation, gender identity or expression,  
4 disability or by age by closing the gaps in income inequity. Wage variance based on prior wage  
5 history is one of the causes of wage discrimination for women and men. Salary history creates a  
6 substantial probability that if a person is underpaid at their first job it will continue throughout  
7 their career and this should not be a factor in setting compensation.

8 SECTION 2. The title of Chapter 28-6 of the General Laws entitled "Wage  
9 Discrimination Based on Sex" is hereby amended to read as follows:

10 ~~CHAPTER 28-6~~

11 ~~Wage Discrimination Based on Sex~~

12 CHAPTER 28-6

13 WAGE FAIRNESS ACT

14 SECTION 3. Sections 28-6-17, 28-6-18 and 28-6-21 of the General Laws in Chapter 28-6  
15 entitled "Wage Discrimination Based on Sex" are hereby amended to read as follows:

16 **28-6-17. Definitions.**

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

18 (b) "Employee" as used in §§ 28-6-17 -- 28-6-21 means any person employed for hire by  
19 any employer in any lawful employment, but does not include persons engaged in domestic

1 service in the home of the employer, or employees of any social club, fraternal, charitable,  
2 educational, religious, scientific, or literary association, no part of the net earnings of which  
3 inures to the benefit of any private individual.

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

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

10 (e) "Wage" means all amounts at which the labor or service rendered is recompensed,  
11 whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other  
12 method of calculating the amount, and includes benefits, but shall not include, gratuities as  
13 defined in § 28-12-5 or overtime pay as defined in § 28-12-4.1.

14 (f) "Wage history" means the wages paid to an applicant for employment by the  
15 applicant's current employer and/or previous employer or employers. "Wage history" does not  
16 include any objective measure of the applicant's productivity such as revenue, sales, or other  
17 production reports.

18 **28-6-18. Wage differentials based on sex prohibited. Wage differentials based on**  
19 **protected characteristics prohibited.**

20 (a) No employer shall ~~discriminate in the payment of wages as between the sexes or shall~~  
21 ~~pay any female in his or her employ salary or wage rates less than the rates paid to male~~  
22 ~~employees for equal work or work on the same operations~~ pay any of its employees at a wage rate  
23 less than the rate paid to employees of another race, color, or gender for equal work, except where  
24 the employer meets the standards set forth in subsection (b) of this section.

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

- 27 (1) Seniority, experience, training, skill, or ability;
- 28 (2) Duties and services performed, either regularly or occasionally;
- 29 (3) The shift or time of day worked; or
- 30 (4) Availability for other operations or any other reasonable differentiation except  
31 difference in sex.

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

1           (d)(1) No employer shall prohibit an employee from inquiring about, discussing, or  
2 disclosing the wages of such employee or another employee, or retaliate against an employee who  
3 engages in such activities. No employer shall require an employee to enter into a waiver or other  
4 agreement that purports to deny an employee the right to disclose or discuss their wages. An  
5 employer shall not prohibit an employee from aiding or encouraging any other employee to  
6 exercise their rights under this subsection. However, employees who have access to the  
7 compensation information of other employees or applicants as a part of their essential job  
8 functions cannot disclose the pay of other employees or applicants to individuals who do not  
9 otherwise have access to compensation information, unless the disclosure is:

10           (i) In response to a formal complaint or charge;

11           (ii) In furtherance of an investigation, proceeding, hearing, or action, including an  
12 investigation conducted by the employer; or

13           (iii) Consistent with the employer's legal duty to furnish information.

14           (2) Nothing in this section shall require an employee to disclose their wages.

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

17           (e) No employer shall:

18           (1) Rely on the wage history of an applicant for employment in considering them for  
19 employment, including, but not limited to, requiring that an applicant's prior wages satisfy  
20 minimum or maximum criteria as a condition of being considered for employment;

21           (2) Rely on the wage history of an applicant for employment in determining the wages  
22 such applicant is to be paid by the employer upon hire; provided, that an employer may rely on  
23 wage history, if it is voluntarily, and without prompting, provided by an applicant for  
24 employment, after the employer makes an offer of employment with an offer of wages to the  
25 applicant, to support a wage higher than the wage offered by the employer;

26           (3) Seek from an applicant for employment or their current or former employer the wage  
27 history of the applicant; provided, however, that an employer may inquire about an applicant's  
28 past performance as well as whether the applicant will have to forfeit deferred compensation or  
29 unvested equity from their current employer and the value and structure of the deferred  
30 compensation or unvested equity, request documentation to verify the applicant's representation,  
31 and consider such information in making the applicant an offer. An employer may seek to  
32 confirm an applicant's wage history only after an offer of employment with compensation has  
33 been made to the applicant and the applicant has responded to the offer by providing wage history  
34 to support a wage higher than that offered by the employer.

1           (f) Subsection (e) of this section shall not apply to:

2           (1) Any actions taken by an employer, employment agency, or employee or agent thereof  
3 pursuant to any federal, state or local law that specifically authorizes the disclosure or verification  
4 of salary history for employment purposes, or specifically requires knowledge of salary history to  
5 determine an employee's compensation;

6           (2) Applicants for internal transfer or promotion with their current employer;

7           (3) Any attempt by an employer, employment agency, or employee or agent thereof, to  
8 verify an applicant's disclosure of non-salary related information or conduct a background check;  
9 provided, that if such verification or background check discloses the applicant's salary history,  
10 such disclosure shall not be relied upon for purposes of determining the salary, benefits or other  
11 compensation of such applicant during the hiring process, including the negotiation of a contract;  
12 or

13           (4) Public employee positions for which salary, benefits or other compensation are  
14 determined pursuant to procedures established by collective bargaining.

15           (g) Every employer subject to this chapter shall post in a conspicuous place or places on  
16 its premises a notice to be prepared or approved by the director, which shall set forth excerpts of  
17 this chapter and any other relevant information which the director deems necessary to explain this  
18 chapter. Any employer who does not comply with the provisions of this section shall be punished  
19 by a fine of not more than five hundred dollars (\$500).

20           **28-6-21. Penalty for violations.**

21           Any employer who violates any provision of §§ 28-6-17 -- 28-6-21, or who discharges or  
22 in any other manner discriminates against any employee because the employee has made any  
23 complaint to his or her employer, the director of labor and training, or any other person, or  
24 instituted or caused to be instituted any proceeding under or related to §§ 28-6-17 -- 28-6-21, or  
25 has testified or is about to testify in any proceeding, shall, upon conviction, be punished by a fine  
26 of not more than ~~two hundred dollars (\$200)~~ five hundred dollars (\$500) or by imprisonment for  
27 not more than six (6) months, or by both fine and imprisonment.

28           SECTION 4. This act shall take effect on October 1, 2020.

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

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1           This wage fairness act would prohibit employers from asking job applicants about salary  
2 history. It would also prohibit discrimination in payment of wages, and would allow employees to  
3 discuss their salary with co-employees.

4           This act would take effect on October 1, 2020.

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