

SENATE BILL NO. 153

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY SENATOR GARDNER

Introduced: 1/21/16

Referred: Labor and Commerce, State Affairs

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the State Commission for Human Rights authority and procedures;**
2 **relating to and prohibiting wage discrimination based on the sex of an employee; and**
3 **providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 18.80.100 is amended to read:

6 **Sec. 18.80.100. Complaint; withdrawal.** (a) **Except as provided in (c) of**
7 **this section, a** [A] person who is aggrieved by a discriminatory practice prohibited by
8 this chapter may sign and file with the commission a written, verified complaint
9 stating the name and address of the person alleged to have engaged in the
10 discriminatory practice, and the particulars of the discrimination. A complainant may
11 withdraw the complaint at any time before the service of an accusation under
12 AS 18.80.120. A withdrawal must be signed by the complainant and be in writing. A
13 withdrawal does not limit the discretion of the executive director provided in (b) of
14 this section.

1 (b) **Except as provided in (c) of this section, the** [THE] executive director
 2 may file a complaint in the manner provided in (a) of this section when a
 3 discriminatory practice comes to the attention of the executive director.

4 * **Sec. 2.** AS 18.80.100 is amended by adding a new subsection to read:

5 (c) The executive director or the director's designee may not file a complaint
 6 under this section alleging wage discrimination prohibited by AS 23.10.700.

7 * **Sec. 3.** AS 18.80.145(a) is amended to read:

8 (a) When an action **alleging a violation of this chapter** is brought under
 9 AS 22.10.020(i), the plaintiff shall serve a copy of the complaint on the commission.
 10 Upon timely application, the commission may intervene as a party to the action as a
 11 matter of right. If the commission certifies in writing to the court that it is presently
 12 investigating or actively dealing with the act, practice, or policy of the defendant
 13 giving rise to the cause of action, the court shall, at the request of the commission,
 14 defer proceedings for a period of not more than 45 days or **an** [SUCH] extended
 15 period as the court may allow; except that the court may enter an order or injunction if
 16 necessary to prevent irreparable injury to the plaintiff.

17 * **Sec. 4.** AS 22.10.020(i) is amended to read:

18 (i) The superior court is the court of original jurisdiction over all causes of
 19 action arising under the provisions of AS 18.80 **or AS 23.10.700 - 23.10.790**. A
 20 person who is injured or aggrieved by an act, practice, or policy **that** [WHICH] is
 21 prohibited under AS 18.80 **or AS 23.10.700 - 23.10.790** may apply to the superior
 22 court for relief. The person aggrieved or injured may maintain an action on behalf of
 23 that person or on behalf of a class consisting of all persons who are aggrieved or
 24 injured by the act, practice, or policy giving rise to the action. In an action brought
 25 under this subsection, the court may grant relief as to any act, practice, or policy of the
 26 defendant **that** [WHICH] is prohibited by AS 18.80 **or AS 23.10.700 - 23.10.790**,
 27 regardless of whether each act, practice, or policy, with respect to which relief is
 28 granted, directly affects the plaintiff, so long as a class or members of a class of which
 29 the plaintiff is a member are or may be aggrieved or injured by the act, practice, or
 30 policy. The court may enjoin any act, practice, or policy **that** [WHICH] is illegal
 31 under AS 18.80 **or AS 23.10.700 - 23.10.790** and may order any other relief, including

1 the payment of money, that is appropriate.

2 * **Sec. 5.** AS 23.10 is amended by adding new sections to read:

3 **Article 9. Equal Pay Regardless of Sex of Employee.**

4 **Sec. 23.10.700. Equal pay regardless of an employee's sex.** (a) An employer
5 may not pay an employee of one sex wages that are less than the wages the employer
6 pays an employee who is of the opposite sex for work that is substantially similar
7 when viewed as a composite of skill, effort, and responsibility, and performed under
8 similar working conditions, unless the employer demonstrates that the wage
9 differential is primarily based on the employer's reliance on a

10 (1) relevant disparity in the employees' education, training, or
11 experience;

12 (2) seniority system;

13 (3) merit system;

14 (4) system that measures earnings by quantity;

15 (5) system that measures earnings by quality of production; or

16 (6) system that incorporates a geographic wage differential.

17 (b) An employer may not unreasonably rely on a disparity or system under
18 (a)(1) - (6) of this section.

19 **Sec. 23.10.710. Remedies.** (a) An employer is liable to each employee for
20 unpaid wages withheld in violation of AS 23.10.700 in the amount of the difference
21 between the wages the employee was paid and the wages the employee of the opposite
22 sex was paid and, unless waived under (d) of this section, liquidated damages equal to
23 treble the amount of unpaid wages.

24 (b) An employee may bring an action in the superior court under
25 AS 22.10.020(i) to recover wages and damages under (a) of this section, or an
26 employee may individually consent in writing to representation by the commissioner.
27 The employee or the commissioner shall file the consent in the court in which the
28 action is brought. At the written request of an employee who alleges a violation of
29 AS 23.10.700, the commissioner may take an assignment in trust for the employee of
30 the full amount to which the employee is entitled under that section and may bring a
31 legal action to collect damages under (a) of this section.

1 (c) The commissioner may supervise the payment of damages owed to an
 2 employee under this section. Payment in full under an agreement by an employee to
 3 settle a claim under this section for unpaid wages or liquidated damages constitutes a
 4 waiver of any right as to a claim the employee may have under (a) of this section to
 5 unpaid wages or liquidated damages.

6 (d) In a settlement for unpaid wages under this section that is not supervised
 7 by the department or the court, an employee is entitled to liquidated damages under (a)
 8 of this section unless the employee and the employer enter into a written settlement
 9 agreement in which the employee expressly waives the right to receive liquidated
 10 damages. A private written settlement agreement under this subsection is not valid
 11 unless submitted to the commissioner for review. The commissioner shall review the
 12 agreement and approve it if it is fair to the parties. The commissioner shall approve or
 13 deny an agreement within 30 days after receipt. A waiver of liquidated damages may
 14 not be a condition of employment.

15 **Sec. 23.10.715. Double recovery of damages not permitted.** An employee
 16 who recovers unpaid wages from an employer as the result of a complaint or
 17 agreement under AS 23.10.700 and recovers unpaid wages from the employer under
 18 29 U.S.C. 206(d) as a result of the same conduct by the employer shall return to the
 19 employer the unpaid wages recovered under AS 23.10.710 or the unpaid wages
 20 recovered under federal law, whichever is less.

21 **Sec. 23.10.720. Disclosure of wages; discussion of wages.** An employer may
 22 not prohibit an employee from disclosing the employee's wages, discussing the wages
 23 of others, inquiring about another employee's wages, or helping or encouraging
 24 another employee to exercise a right under this section. Nothing in this subsection
 25 creates an obligation for a person to disclose information about their own wages or the
 26 wages of another.

27 **Sec. 23.10.725. Employer shall maintain records.** An employer shall make a
 28 record of the wage rates and of wages paid to each employee from the date of the
 29 employee's hire and maintain that record for at least three years after the employee's
 30 last day of employment.

31 **Sec. 23.10.730. Posting summary required.** An employer subject to

1 AS 23.10.700 - 23.10.790 shall keep a summary or abstract of AS 23.10.700 -
 2 23.10.790, approved by the commissioner, posted in a conspicuous location at the
 3 place where an employee is employed. Upon request by an employer, the
 4 commissioner shall provide a copy of the summary without charge.

5 **Sec. 23.10.735. Retaliation prohibited.** An employer may not discharge,
 6 discipline, threaten, discriminate against, or penalize an employee for exercising a
 7 right under AS 23.10.700 - 23.10.790 or participating in or benefitting from a
 8 complaint, claim, trial, agreement, or investigation resulting from an alleged violation
 9 of AS 23.10.700 - 23.10.790.

10 **Sec. 23.10.740. Damages for retaliation.** An employee who has been
 11 discharged, disciplined, threatened, discriminated against, or penalized in violation of
 12 AS 23.10.735 may file a civil claim against the employer for damages, including
 13 reinstatement and lost wages.

14 **Sec. 23.10.745. Accepting lesser wages not a bar to action.** An employee's
 15 agreement to work for wages less than the wages required by AS 23.10.700 does not
 16 bar an action under AS 23.10.700 - 23.10.790.

17 **Sec. 23.10.750. Statute of limitations.** An action under AS 23.10.700 -
 18 23.10.790 may be filed not later than three years after the injury to the aggrieved
 19 employee last occurs.

20 **Sec. 23.10.755. Regulations.** The commissioner shall adopt regulations under
 21 AS 44.62 (Administrative Procedure Act) to implement and interpret AS 23.10.700 -
 22 23.10.790.

23 **Sec. 23.10.790. Definitions.** In this section,

24 (1) "employee" means a person in the service of an employer;

25 (2) "employer" means the state, the University of Alaska, the Alaska
 26 Railroad Corporation, a political subdivision of the state, and a person who employs
 27 one or more other persons.

28 * **Sec. 6.** AS 18.80.220(a)(5) is repealed.

29 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 **APPLICABILITY.** AS 18.80.100, as amended by sec. 1 of this Act, AS 18.80.100(c),

1 enacted by sec. 2 of this Act, AS 22.10.020(i), as amended by sec. 4 of this Act, AS 23.10.700
2 - 23.10.790, enacted by sec. 5 of this Act, and the repeal of AS 18.20.220(a)(5) in sec. 6 of
3 this Act apply to wages for services performed on or after the effective date of this Act.

4 * **Sec. 8.** This Act takes effect July 1, 2016.