

Regular Session, 2014

SENATE BILL NO. 334

BY SENATOR PETERSON

EMPLOYMENT. Provides that the Louisiana Equal Pay for Women Act be applicable to men, private employers and requires government contractors to verify equal pay practices. (8/1/14)

1 AN ACT  
2 To amend and reenact R.S. 23:661, 662, 663(2), and (3), 664(A), 665, 666(A), (B), and (C),  
3 667, 668, 669, and R.S. 38:2212(A)(1)(b)(ii)(bb) and R.S. 51:2231(C), 2232(12), the  
4 introductory paragraph of 2235, (9), (11), (12), (13), (14), and the introductory  
5 paragraph of (16) and(16)(c), to enact R.S. 23:663(4), 664(F) and R.S. 38:2212.11  
6 and to repeal R.S. 23:666(F), relative to the "Louisiana Equal Pay for Women Act";  
7 to provide for declaration of public policy; to make policies applicable to men; to  
8 provide for definitions; to prohibit discrimination; to prohibit unintentional  
9 discrimination; to provide for the Louisiana Commission on Human Rights; to  
10 provide for complaint procedure; to provide for time limits; to provide for courts; to  
11 provide for judicial interest; to provide for liquidated damages; to provide for  
12 coordination of discrimination laws; to provide for public contracts; to require  
13 private employers who contract with public entities to perform certain acts; to  
14 provide for verification; to provide for affidavits; to provide for penalties; to provide  
15 for cancellation of contracts; to provide for enforcement; and to provide for related  
16 matters.

17 Be it enacted by the Legislature of Louisiana:

1 Section 1. R.S. 23:661, 662, 663(2), and (3), 664(A), 665, 666(A), (B), and (C), 667,  
2 668, and 669 are hereby amended and reenacted and R.S. 23:663(4) and 664(F) are hereby  
3 enacted to read as follows:

4 CHAPTER 6-A. LOUISIANA EQUAL PAY ~~FOR WOMEN~~ ACT

5 §661. Short title; citation

6 This Chapter shall be known and may be cited as the "Louisiana Equal Pay  
7 ~~for Women~~ Act".

8 §662. Declaration of public policy

9 The public policy of this state is that ~~a woman who performs public service~~  
10 ~~for the state is entitled to be paid~~ the same compensation ~~for her service as is paid to~~  
11 ~~a man who performs~~ **must be paid to workers who perform work that is** the same  
12 kind, grade and quality ~~of service~~; and a distinction in compensation may not be  
13 made because of sex.

14 §663. Definitions

15 As used in this Chapter, the following terms shall have the definitions  
16 ascribed in this Section unless the context indicates otherwise:

17 \* \* \*

18 (2) "Employee" means any ~~female~~ individual who is ~~employed to work forty~~  
19 ~~or more hours a week and who is employed by the~~ **works for an** employer **in return**  
20 **for compensation.**

21 (3) "Employer" means any department, office, division, agency, commission,  
22 board, committee or other organizational unit of the state, **or any local**  
23 **governmental subdivision, political subdivision, or any agency or department**  
24 **thereof, and any person or other legal entity that pays twenty or more**  
25 **individuals to work within the state.**

26 (4) "**Unpaid wages**" means **the difference between the compensation**  
27 **actually paid to an employee and the amount required to be paid the employee**  
28 **under R.S. 23:664.**

29 §664. Prohibited acts

1           A. No employer may discriminate ~~against an employee~~ **between employees**  
2           **in the same establishment** on the basis of sex by paying wages to an employee at  
3           a rate less than that paid ~~within the same agency~~ to another employee of a different  
4           sex for the same or substantially similar work on jobs ~~in which the employee's~~  
5           ~~performance requires~~ equal **or comparable** skill, effort, education, **experience**, and  
6           responsibility and ~~that are performed under similar~~ **involve the same or comparable**  
7           working conditions ~~including time worked in the position.~~

8   \*           \*           \*

9           **F. In any action pursuant to this Chapter, an employer may not raise as**  
10          **a defense any agreement by an employee to work for less than the rate to which**  
11          **the employee is entitled under this Chapter.**

12          §665. Complaint procedure

13          A. An employee who in good faith believes that ~~her~~ **an** employer is in  
14          violation of this Chapter shall submit written notice of the alleged violation to the  
15          employer. An employer who receives such written notice from an employee shall  
16          have sixty days from receipt of the notice to investigate the matter and remedy any  
17          violation of this Chapter. If an employer remedies the violation in a manner ~~that~~  
18          ~~complies with the statute and~~ **satisfactory to the employee** within the time provided  
19          herein, ~~the employee may not bring any action against the employer pursuant to this~~  
20          ~~Chapter except as provided in Subsections B and C of this Section~~ **then no further**  
21          **action is necessary on the part of the employer.**

22          B. If an employer fails to resolve the dispute to the satisfaction of such  
23          employee within the time provided herein, the employee may file a complaint with  
24          the commission requesting an investigation of the complaint pursuant to ~~R.S. 23:301~~  
25          **Chapter 3-A of this Title or R.S. 51:2257.**

26          C. If the commission finds evidence of discriminatory, retaliatory or other  
27          adverse employment action on the part of the employer in violation of this Chapter  
28          but is unable to resolve or mediate the dispute, or fails to render a decision as to the  
29          dispute **within one hundred and eighty days from the filing of the complaint**, or

1 issues a finding of no discrimination on the part of the employer, the employee may  
2 institute a civil suit in ~~the Nineteenth Judicial District Court~~ **a court of competent**  
3 **jurisdiction where the employee is domiciled or pursuant to the provisions of**  
4 **the Louisiana Code of Civil Procedure Article 42.**

5 §666. Damages

6 A. An employer who violates the provisions of this Chapter shall be liable to  
7 the affected employees in the amount of the employee's unpaid wages, **judicial**  
8 **interest on the unpaid wages,** and reasonable attorney fees and costs.

9 B. **In addition to the relief provided for in Subsection A of this Section,**  
10 **an employer who violates the provisions of this Chapter shall be liable for all of**  
11 **the following:**

12 (1) **Liquidated damages up to the amount of unpaid wages where the**  
13 **employer knowingly discriminated on the basis of sex or the employer violated**  
14 **R.S. 23:664(D) or (E).**

15 (2) **Reinstatement, promotion, benefits lost or not received, front pay,**  
16 **any combination of these, and any other relief that the court in its discretion**  
17 **determines is necessary or appropriate to fulfill the purposes of this Chapter.**

18 C. The award of monetary relief shall be limited to those violations which  
19 have occurred within a thirty-six-month period prior to the employee's written notice  
20 to the employer, as required in R.S. 23:665(A).

21 ~~C. In cases where suit is filed in the district court, no monetary relief may be~~  
22 ~~awarded the employee for losses incurred between the date that the district court~~  
23 ~~rendered its final judgment and the date upon which all appeals of that judgment~~  
24 ~~have been exhausted.~~

25 \* \* \*

26 §667. Limitation of actions

27 A. Any action filed in ~~the Nineteenth Judicial District Court~~ **district court**  
28 to recover unpaid wages or any other form of relief for a violation of this Chapter  
29 shall be commenced within one year of the date that an employee is aware or should

1 have been aware that the employee's employer is in violation of this Chapter.

2 B. This one-year prescriptive period shall be suspended during the sixty-day  
3 period allowed the employer by this Chapter to respond to the employee's written  
4 notice, during the pendency of any administrative review or investigation of the  
5 employee's claim by the ~~commission~~ **Louisiana Commission on Human Rights** or  
6 the United States ~~Department of Labor~~ **Equal Employment Opportunity**  
7 **Commission**, or both.

8 §668. Records to be kept by employers

9 An employer subject to this Chapter shall create and preserve records  
10 reflecting the name, address, **gender**, and position of each employee, and all wages  
11 paid to each employee. These records shall be preserved for a period of not less than  
12 three years from the employee's last date of employment with the employer.

13 §669. ~~Supplemental application~~ **Coordination with Louisiana Employment**  
14 **Discrimination Law**

15 This ~~The provisions of this~~ Chapter is **are** supplemental and is not intended  
16 to supercede any provision provided for in **to the provisions contained in** Chapter  
17 3-A of this Title, the "Louisiana Employment Discrimination ~~Act~~ **Law**", which  
18 prohibits discrimination based upon sex regardless of whether the employer is a state  
19 entity, a private business, or other employer. **The provision of this Chapter shall**  
20 **be construed to prohibit unintentional, as well as intentional, discrimination in**  
21 **pay. Should the civil action authorized in this Chapter be joined with an action**  
22 **authorized under the "Louisiana Employment Discrimination Law", the venue**  
23 **and limitations provisions of this Chapter will apply to the joined actions.**

24 Section 2. R.S. 38:2212(A)(1)(b)(ii)(bb) is hereby amended and reenacted and R.S.  
25 38:2212.11 is hereby enacted to read as follows:

26 §2212. Advertisement and letting to lowest responsible bidder; public work;  
27 electronic bidding; participation in mentor-protégé program;  
28 exemptions

29 A.(1) \* \* \*

1 (b) \* \* \*

2 (ii) \* \* \*

3 (bb) Other documentation and information required including but not limited  
4 to the low bidder's attestation pursuant to R.S. 38:2212.10, **2212.11**, and 2227 shall  
5 be furnished by the low bidder within ten days after the bid opening. The ten-day  
6 period shall not be altered or waived by any public entity except the governing  
7 authority of any publicly owned commercial aviation airport, the Sewerage and  
8 Water Board of New Orleans, and all agencies of the City of New Orleans, including  
9 but not limited to the Regional Transit Authority and the New Orleans Aviation  
10 Board, who shall require that the other documentation and information referred to  
11 in this Subitem be furnished by the two lowest bidders three days after the bid  
12 opening.

13 \* \* \*

14 **§2212.11. Verification of equal pay in public contracts**

15 **A. A public entity may not enter into a contract for goods or services**  
16 **with any private employer unless the private employer meets all of the following**  
17 **requirements:**

18 **(1) Provides a sworn affidavit attesting that the pay practices of the**  
19 **private employer comply with R.S. 23:661 through 669.**

20 **(2) Complies with R.S. 23:661 through 669 during the term of the**  
21 **contract.**

22 **(3) Maintains and makes available its records pursuant to R.S. 23:668 at**  
23 **reasonable times upon notice from the contracting public entity.**

24 **B. A private employer must require all subcontractors to satisfy the**  
25 **requirements listed in Paragraph A of this Section.**

26 **C. A public entity contracting with a private employer that is in violation**  
27 **of the provisions of this Section must require the employer to comply with the**  
28 **provisions of this Section within a reasonable amount of time. A private**  
29 **employer that fails to meet such requirement is subject to cancellation of any**

1        **public contract.**

2                **D. A private employer penalized in accordance with this Section has the**  
3        **right to appeal to the appropriate agency, department, or other public entity**  
4        **sanctioning the employer.**

5                **E. Under this Section, a private employer is subject to cancellation of a**  
6        **contract pursuant to Paragraph C of this Section for the actions of a**  
7        **subcontractor only if the private employer had actual knowledge of the**  
8        **subcontractor's failure to comply.**

9                Section 3. R.S. 51:2231(C), 2232(12), the introductory paragraph of 2235, (9), (11),  
10        (12), (13), (14), and the introductory paragraph of (16), and (16)(c) are hereby amended and  
11        reenacted to read as follows:

12                §2231. Statement of purpose; limitation on prohibitions against discrimination  
13                                because of age

14    \*        \*        \*

15                C. The Louisiana Commission on Human Rights shall have enforcement  
16        powers including adjudication of claims of discrimination prohibited by R.S. 23:312,  
17        323, and 332, sickle cell trait discrimination prohibited by R.S. 23:352, ~~and~~  
18        discrimination because of pregnancy prohibited by R.S. 23:341 et seq., **and pay**  
19        **discrimination prohibited by Chapter 6-A of Title 23 of the Louisiana Revised**  
20        **Statutes of 1950.**

21                §2232. Definitions

22                                As used in this Chapter:

23    \*        \*        \*

24                (12) "Discriminatory practice in connection with employment" means an  
25        employment practice prohibited by ~~R.S. 23:312, 323, or 332~~ **Chapter 3-A or**  
26        **Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950.**

27    \*        \*        \*

28                §2235. Powers and duties of commission

29                In the enforcement of this Chapter ~~or Chapter 3-A or Chapter 6-A of Title~~

1           **23 of the Louisiana Revised Statutes of 1950**, the commission shall have the  
2 following powers and duties:

3   \*       \*       \*

4           (9) To receive, initiate, investigate, seek to conciliate, hold hearings on, and  
5 pass upon complaints alleging violations of this Chapter **or Chapter 3-A or**  
6 **Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950**.

7   \*       \*       \*

8           (11) To furnish technical assistance requested by persons subject to this  
9 Chapter **or Chapter 3-A or Chapter 6-A of Title 23 of the Louisiana Revised**  
10 **Statutes of 1950** to further their compliance with this Chapter, **or Chapter 3-A or**  
11 **Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950**, or an order  
12 issued thereunder.

13           (12) To make studies appropriate to effectuate the purposes and policies of  
14 this Chapter **or Chapter 3-A or Chapter 6-A of Title 23 of the Louisiana Revised**  
15 **Statutes of 1950** and make the results thereof available to the public.

16           (13) To render, at least annually, a comprehensive written report to the  
17 governor and to the legislature. The report may contain recommendations of the  
18 commission for legislative or other action to effectuate the purposes and policies of  
19 this Chapter **or Chapter 3-A or Chapter 6-A of Title 23 of the Louisiana Revised**  
20 **Statutes of 1950**.

21           (14) To adopt, promulgate, amend, and rescind rules and regulations to  
22 effectuate the purposes and provisions of this Chapter, **or Chapter 3-A or Chapter**  
23 **6-A of Title 23 of the Louisiana Revised Statutes of 1950**, including regulations  
24 requiring the posting of notices prepared or approved by the commission.

25   \*       \*       \*

26           (16) To create local or statewide advisory committees that in its judgment  
27 will aid in effectuating the purposes of this Chapter **or Chapter 3-A or Chapter 6-A**  
28 **of Title 23 of the Louisiana Revised Statutes of 1950**. Members of such  
29 committees shall serve without pay but shall be reimbursed for expenses incurred in



1 such service. The commission may make provision for technical and clerical  
2 assistance to the committees. The commission may empower these committees:

3 \* \* \*

4 (c) To make recommendations to the commission for the development of  
5 policies and practices that will aid in carrying out the purposes of this Chapter **or**  
6 **Chapter 3-A or Chapter 6-A of Title 23 of the Louisiana Revised Statutes of**  
7 **1950.**

8 Section 4. R.S.23:666(F) is hereby repealed.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Carla S. Roberts.

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#### DIGEST

Peterson (SB 334)

Present law prohibits any employer, whether public or private, from intentionally discriminating against an employee on the basis of sex.

Present law prohibits employment discrimination against women who are state government employees, whether the discrimination is intentional or unintentional, which is known as the "Louisiana Equal Pay for Women Act".

Proposed law retains present law but provides that private sector, local government, and political subdivision employers would also be subject to the prohibition for unintentional employment discrimination.

Proposed law removes the gender distinction in the "Louisiana Equal Pay for Women Act" and makes the proposed law applicable to men.

Proposed law provides that, in any action for discrimination based upon sex that an employer may not raise as a defense any agreement by an employee to work for less than the rate to which the employee is entitled under proposed law.

Present law provides that, if a state employer remedies the violation in a manner that complies with the statute, the employee may not bring any action against the employer except that a lawsuit may be filed in the 19<sup>th</sup> Judicial District Court in East Baton Rouge Parish.

Present law provides that, when a lawsuit is filed on the basis of sex discrimination pursuant to the "Louisiana Employment Discrimination Law" against a private sector, local government, or political subdivision employers, the venue of the lawsuit will be in the parish where the violation occurred.

Proposed law provides that should a claim against any employer, whether public or private, be filed pursuant to proposed law and be joined with an action authorized under the "Louisiana Employment Discrimination Law", the venue can be either in the parish where the violation occurred, or in the parish where the employee is domiciled, or in the parish where the employer's business is located.

Proposed law provides that if an employer remedies the violation in a manner that is

satisfactory to the employee, then no further action is necessary on the part of the employer.

Proposed law provides that the employee may institute a civil suit in a court of competent district court where the employee is domiciled or where a defendant is domiciled or doing business in Louisiana.

Present law provides that a state employer who violates the provisions of discrimination on the basis of sex, whether intentional or unintentional, shall be liable to the affected employees in the amount of the employee's unpaid wages and reasonable attorney fees and costs.

Proposed law retains present law but also provides for judicial interest in addition to unpaid wages and attorney fees as well as reinstatement, promotion, benefits lost or not received, front pay, any combination of these, and any other relief that the court in its discretion determines is necessary or appropriate.

Proposed law provides that when an employer knowingly discriminates on the basis of sex or the employer retaliated against an employee for filing a discrimination claim, the employer shall be liable for liquidated damages.

Present law provides that the provisions of the "Louisiana Equal Pay for Women Act" are intended to be supplemental to the provisions of the "Louisiana Employment Discrimination Act", which prohibits discrimination based upon sex regardless of whether the employer is a state entity, a private business, or other employer.

Proposed law provides that proposed law will be construed to prohibit unintentional, as well as intentional discrimination in pay.

Present law requires most individuals and private companies that do business with a state or local government agency to adhere to public bid laws and supply certain information to government entity that is hiring the individual or private company.

Proposed law retains present law but requires individuals and private companies that do business with a state or local government agency to attest to the fact that they will provide sworn affidavits and verification that they will comply with proposed law.

Proposed law provides that a public entity may not enter into a contract for goods or services with any private employer unless the private employer does all of the following:

- (1) Provides a sworn affidavit attesting that the pay practices of the private employer comply with proposed law.
- (2) Maintains and makes available its records at reasonable times upon notice from the contracting public entity. Records to be made available include the name, address, and position of each employee, and all wages paid to each employee and such records shall be preserved for a period of not less than three and one half years from the employee's last date of employment with the employer.
- (3) A private employer must require all subcontractors to satisfy the requirements of proposed law.

Proposed law provides that a public entity contracting with a private employer that is in violation of the provisions of proposed law must require the employer to comply with the provisions of proposed law within a reasonable amount of time. Proposed law provides that a private employer that fails to meet such requirement is subject to cancellation of any public contract.

Proposed law provides that a private employer penalized in accordance with proposed law

has the right to appeal to the appropriate agency, department, or other public entity sanctioning the employer.

Proposed law provides that a private employer who is subject to cancellation of a contract pursuant to proposed law for the actions of a subcontractor may only be penalized if the private employer had actual knowledge of the subcontractor's failure to comply with the proposed law.

Present law provides that the Louisiana Commission on Human Rights is a state commission that enforces the policies embodied in the Federal Civil Rights Act of 1964, 1968, and 1972 and the Age Discrimination in Employment Act of 1967. Present law provides that Louisiana Commission on Human Rights accepts the deferral of cases from the Federal Equal Employment Opportunity Commission.

Present law provides that the Louisiana Commission on Human Rights shall have enforcement powers including adjudication of claims of discrimination on the basis of age, race, color, religion, sex, or national origin.

Proposed law retains present law but provides that the Louisiana Commission on Human Rights would also have jurisdiction over proposed law.

Effective August 1, 2014.

(Amends R.S. 23:661, 662, 663(2), and (3), 664(A), 665, 666(A), (B), and (C), 667, 668, 669 and R.S. 38:2212(A)(1)(b)(ii)(bb) and R.S. 51:2231(C), 2232(12), 2235(intro para), (9), (11), (12), (13), (14), and (16) (intro para) and (16)(c); adds R.S. 23:663(4), 664(F) and R.S. 38:2212.11; repeals R.S. 23:666(F))