

# SENATE BILL NO. 59

## 101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

1028S.01H

ADRIANE D. CROUSE, Secretary

### AN ACT

To repeal sections 290.400, 290.410, 290.420, 290.430, 290.440, and 290.450, RSMo, and to enact in lieu thereof five new sections relating to employment practices relating to gender.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 290.400, 290.410, 290.420, 290.430, 290.440, and 290.450, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 290.400, 290.410, 290.420, 290.430, and 290.440, to read as follows:

290.400. As used in sections 290.400 to [290.450]

**290.460** the following words have the meanings indicated unless the context clearly requires otherwise:

(1) "Commission", the labor and industrial relations commission of Missouri;

(2) "Employee", every woman or man in receipt of or entitled to compensation for labor performed for any employer;

(3) "Employer", every person, firm, corporation, agent, manager, representative, contractor, subcontractor, principal or other person having control or direction of any woman or man employed at any labor, or responsible directly or indirectly for the wages of another;

(4) ["Female", a woman of eighteen years or over;

(5)] "Wage rates" or "wages", [any compensation for labor measured by time, piece, or otherwise] **all**

**compensation in any form that an employer provides to**

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 **employees in payment for work done or services rendered,**  
19 **including but not limited to base pay, overtime bonuses,**  
20 **stock options, awards or tips, or various forms of**  
21 **nonmonetary compensation if provided in lieu of or in**  
22 **addition to monetary compensation, provided that such**  
23 **compensation has economic value to an employee.**

290.410. 1. Notwithstanding any other provisions of  
2 the law, no employer shall pay any [female in his employ]  
3 **employee** at wage rates less than the wage rates paid to  
4 [male] employees [in the same establishment for the same  
5 quantity and quality of the same classification of work,  
6 provided that nothing herein shall prohibit a variation of  
7 rates of pay for male and female employees engaged in the  
8 same classification of work based upon a difference in  
9 seniority, length of service, ability, skill, difference in  
10 duties or services performed, difference in the shift or  
11 time of day worked, hours of work, or restrictions or  
12 prohibitions on lifting or moving objects in excess of  
13 specified weight, or other reasonable differentiation, or  
14 factors other than sex, when exercised in good faith] **of the**  
15 **opposite gender, for equal work, the performance of which**  
16 **requires equal skill, effort, and responsibility, and which**  
17 **is performed under similar working conditions.**

18 2. Notwithstanding the provisions of subsection 1 of  
19 this section to the contrary, it shall not be unlawful for  
20 an employer to pay different wage rates to employees if such  
21 payments are made pursuant to:

22 (1) A bona fide seniority or merit system;

23 (2) A system that measures earnings by quantity or  
24 quality of production;

25 (3) Any bona fide factor other than gender, provided  
26 that wage differentials based on varying market rates for

27 equal jobs shall not be considered differentials based on  
28 bona fida factors other than gender; or

29 (4) Bona fide regional economic differentials.

30 3. An employer who is paying wages in violation of  
31 this section shall not, in order to comply with this  
32 section, reduce the wage of any employee.

33 4. No employee may discharge or take any adverse  
34 action or otherwise discriminate against any individual  
35 because such individual has:

36 (1) Opposed any act or practice made unlawful by this  
37 section; or

38 (2) Testified, assisted, or participated in any manner  
39 in an investigation, hearing, or other proceeding to enforce  
40 this section.

41 5. No employer may discharge or take any adverse  
42 action or otherwise discriminate against, coerce,  
43 intimidate, threaten, or interfere with any employee because  
44 such employee inquired about, compared, or otherwise  
45 discussed the employee's wages or the wages of another  
46 employee, or because such employee exercised, enjoyed,  
47 aided, or encouraged any other person to exercise or enjoy  
48 any right granted or protected by this section.

290.420. Any affected [female] employee may register  
2 with the commission a complaint that the wages paid to [her]  
3 **such employee** are less than the wages to which **he or** she is  
4 entitled under sections 290.400 to [290.450] **290.460**.

290.430. The commission shall take all proceedings  
2 necessary to mediate the dispute concerning the payment of  
3 any sums alleged to be due and unpaid to the [female]  
4 **affected** employees. The commission shall have the power to  
5 issue such regulations not inconsistent with the purpose and  
6 provisions of sections 290.400 to [290.450] **290.460**, as it

7 deems necessary or appropriate for the administration  
8 thereof.

290.440. 1. Any employer who violates section 290.410  
2 **[is] shall be** liable to the **[female]** employee affected in  
3 the amount of the wages of which the **[female]** employee is  
4 deprived by reason of the violation **and an additional amount**  
5 **in compensatory damages, such additional amount not to**  
6 **exceed twice the wages awarded.**

7 2. **[Any female employee receiving less than the wage**  
8 **to which she is entitled under sections 290.400 to 290.450**  
9 **may recover in a civil action the balance of the wages,**  
10 **together with the costs of suit, notwithstanding any**  
11 **agreement to work for a lesser wage.] Any employer who**  
12 **violates subsection 4 or 5 of section 290.410 shall be**  
13 **liable to any individual affected in the amount of all wages**  
14 **and benefits lost as a result of the retaliation and, if**  
15 **awarded, an additional amount of compensatory damages or in**  
16 **an amount to be determined by a judge or jury trial.**

17 3. **[The burden of proof shall be upon the person**  
18 **bringing the claim to establish that the differentiation in**  
19 **rate of pay is based upon the factor of sex and not upon**  
20 **other differences or factors.] In the event of a finding**  
21 **that an employer has violated this section, a court may**  
22 **enjoin such employer from future violations of section**  
23 **290.410, and may order the employer to take such additional**  
24 **steps as are necessary, including reclassification of**  
25 **affected workers to ensure an end to the employer's gender-**  
26 **based pay practices or, if the employer has engaged in**  
27 **unlawful retaliation prohibited herein, the court may order**  
28 **such relief as to make the employee whole, including**  
29 **reinstatement.**

30           4. Any employee prevailing in a civil action brought  
31 pursuant to sections 290.400 to 290.440, in addition to the  
32 remedies set forth in this section, may also recover court  
33 costs and reasonable attorney's fees, notwithstanding any  
34 agreement to work for a lesser wage. Any action brought  
35 pursuant to sections 290.400 to 290.440 shall be commenced  
36 within two years after the alleged violation occurs or the  
37 date of the reasonable discovery of such violation.

2           [290.450. Any action based upon or arising  
3 under sections 290.400 to 290.450 shall be  
4 instituted in the circuit court within six  
5 months after the date of the alleged violation,  
6 but in no event shall any employer be liable for  
7 any pay due under sections 290.400 to 290.450  
8 for more than thirty days prior to receipt by  
9 the employer of written notice of claim thereof  
from the female employee.]

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