

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 821 Session of 2021

INTRODUCED BY BULLOCK, SHUSTERMAN, O'MARA, GALLOWAY, SAPPEY, KOSIEROWSKI, ISAACSON, HOHENSTEIN, McNEILL, SANCHEZ, KINSEY, HANBIDGE, ZABEL, HILL-EVANS, GUENST, DALEY, KRAJEWSKI, PASHINSKI, HARRIS, T. DAVIS, N. NELSON, DEASY, DeLUCA, GUZMAN, D. WILLIAMS, CIRESI, SCHWEYER, ROZZI, McCLINTON, LEE AND KINKEAD, MARCH 8, 2021

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MARCH 8, 2021

AN ACT

1 Amending the act of December 17, 1959 (P.L.1913, No.694),
 2 entitled "An act prohibiting discrimination in rate of pay
 3 because of sex; conferring powers and imposing duties on the
 4 Department of Labor and Industry; and prescribing penalties,"
 5 further providing for definitions and for wage rates;
 6 providing for additional violations; and further providing
 7 for collection of unpaid wages and for penalties.

8 The General Assembly of the Commonwealth of Pennsylvania
 9 hereby enacts as follows:

10 Section 1. Section 2(a) of the act of December 17, 1959
 11 (P.L.1913, No.694), known as the Equal Pay Law, is amended and
 12 the section is amended by adding definitions to read:

13 Section 2. Definitions.--(a) The term "employee," as used in
 14 this act, shall mean any person employed for hire in any lawful
 15 business, industry, trade or profession, or in any other lawful
 16 enterprise in which individuals are gainfully employed;
 17 including individuals employed by the Commonwealth or any of its
 18 political subdivisions, including public bodies[: Provided,

1 however, That the term "employee" as used in this act shall not
2 apply to any person or persons who is or are subject to section
3 6 of the Federal Fair Labor Standards Act (Act of June 25, 1938,
4 as amended)].

5 * * *

6 (e.1) "Comparable work" means work that is substantially
7 similar, including substantially similar skill levels, effort
8 and responsibility. The term includes work that is performed
9 under similar working conditions.

10 (e.2) "Working conditions" means the physical surroundings
11 and hazards encountered by employes performing a job, including
12 toxic chemicals or fumes, extreme temperatures and lack
13 of ventilation.

14 (e.3) "Wages" means the earnings of an employe, regardless
15 of whether determined on time, task, piece, commission or other
16 method of calculation, including salaries based on an annual or
17 other basis. The term "wages" also includes fringe benefits,
18 wage supplements or other compensation, whether payable by the
19 employer from funds of the employer or from amounts withheld
20 from the employe's pay by the employer.

21 * * *

22 Section 2. Section 3 of the act is amended to read:

23 Section 3. Wage Rates.--(a) No employer having employes
24 subject to any provisions of this section shall discriminate[,
25 within any establishment in which such employes are employed,
26 between employes] on the basis of sex, race or ethnicity by
27 paying different wages to employes [in such establishment at a
28 rate less than the rate at which he pays wages to employes of
29 the opposite sex in such establishment for equal work on jobs,
30 the performance of which, requires equal skill, effort, and

1 responsibility, and which are] for comparable work performed
2 under similar working conditions, except where such payment is
3 made pursuant to [(1) a seniority system; (2) a merit system;
4 (3) a system which measures earnings by quantity or quality of
5 production; or (4) a differential based on any other factor
6 other than sex: Provided, That any employer who is paying a wage
7 rate differential in violation of this subsection shall not in
8 order to comply with the provisions of this subsection, reduce
9 the wage rate of any employe.]:

10 (1) a bona fide seniority system that shall not reduce
11 seniority for time spent on leave due to a pregnancy-related
12 condition or protected parental, family or medical leave;

13 (2) a bona fide merit system;

14 (3) a bona fide system which measures earnings by quantity
15 or quality of production; or

16 (4) a bona fide factor other than sex, race or ethnicity,
17 such as education, training or experience, to the extent that
18 the factor is reasonably related to the job and consistent with
19 business necessity.

20 (a.1) An employer who is paying a wage rate differential in
21 violation of this subsection shall not in order to comply with
22 the provisions of this subsection, reduce the wage rate of any
23 employe.

24 (a.2) A job title or job description alone shall not
25 determine if two jobs are comparable.

26 (b) No labor organization, or its agents, representing
27 employes of an employer having employes subject to any
28 provisions of this section, shall cause or attempt to cause such
29 an employer to discriminate against an employe in violation of
30 subsection (a) of this section.

1 (c) For purposes of this section, the term "business
2 necessity" means an overriding legitimate business purpose such
3 that the factor relied upon effectively fulfills the business
4 purpose it is supposed to serve. A factor will not be considered
5 consistent with business necessity if an employe demonstrates
6 that an alternative business practice exists that would serve
7 the same business purpose without producing the wage
8 differential.

9 Section 3. The act is amended by adding a section to read:

10 Section 3.1. Additional Violations.--(a) An employer
11 may not do any of the following with respect to an applicant's
12 or employe's prior wages:

13 (1) Require, as a condition of employment, that an
14 employe refrain from inquiring about, discussing or disclosing
15 information about the employe's own wages, including benefits or
16 other compensation, or about any other employe's wages.

17 (2) Rely on the wage history of a prospective employe from
18 any current or former employer of the individual in determining
19 whether to offer employment to or the amount of wages to offer
20 to the individual, except that an employer may rely on prior
21 wage history if it is provided voluntarily and without prompting
22 by a prospective employe to support a wage higher than the wage
23 offered by the employer.

24 (3) Request or require as a condition of being interviewed,
25 or as a condition of continuing to be considered for an offer of
26 employment or as a condition of employment, that a
27 prospective employe disclose wages from a current or former
28 employer.

29 (4) Seek from a current or former employer the previous
30 wages of a prospective employe, except that an employer may seek

1 to confirm prior wage information after an offer of employment
2 with compensation has been made to the prospective employe and
3 the prospective employe responds to the offer by providing prior
4 wage information to support a wage higher than offered by the
5 employer. Under these circumstances, the employer may only seek
6 to confirm prior wages after obtaining written authorization by
7 the prospective employe to do so.

8 (b) An employer may not retaliate against or discharge
9 an employe for any of the following:

10 (1) Complaining about, opposing, instituting a
11 proceeding based on, or attempting or planning to complain about
12 or oppose or institute a proceeding based on, a violation of
13 this act.

14 (2) Testifying or planning to testify against an employer in
15 an action under this act.

16 (3) Assisting an investigation or otherwise participating in
17 an action under this act.

18 (4) Disclosing, inquiring about or discussing
19 wages, benefits or other compensation of the employe or
20 another employe.

21 (c) An employer may not contract with an employe to avoid
22 complying with this act.

23 (d) An employer shall include the expected compensation or
24 the range of expected compensation:

25 (1) for any position the employer publicly advertises as a
26 job opening; and

27 (2) to a prospective employe applying for employment upon
28 reasonable request.

29 Section 4. Sections 5 and 8 of the act are amended to read:

30 Section 5. [Collection of Unpaid Wages] Relief.--(a) An

1 employer who wilfully and knowingly violates the provisions of
2 section 3 or 3.1 of this act shall be liable to the employe or
3 employes affected in the amount of their unpaid wages and in
4 addition, an equal amount as liquidated damages, punitive
5 damages if the violation is found to be intentional or committed
6 with reckless indifference to the employe's or prospective
7 employe's rights under this act, and any other legal and
8 equitable relief as may be appropriate, including employment
9 reinstatement and promotion. Action to recover such wages [and],
10 damages and legal or equitable relief may be maintained in any
11 court of competent jurisdiction by any one or more employes for
12 and in behalf of himself or themselves and other employes
13 similarly situated. Any agreement between the employer and an
14 employe to work for less than the wage to which such employe is
15 entitled under this act shall be no defense to such action. The
16 court in such action shall, in addition to any wages [and],
17 damages and other relief, allow a reasonable attorney's fee and
18 costs of the action to the plaintiff. At the request of any
19 employe paid less than the wage to which [he] the employe is
20 entitled under this act, the Secretary of Labor and Industry may
21 take an assignment of such wage claim for collection and shall
22 bring any legal action necessary to collect such claim. The
23 secretary shall not be required to pay the filing fee or other
24 costs in connection with such action. The secretary shall have
25 power to join various claimants against the employer in one
26 cause of action.

27 (b) [Any action pursuant to the provisions of this act must
28 be brought within two years from the date upon which the
29 violation complained of occurs.] An action under this act shall
30 be commenced within three years of the date of the alleged

1 violation. A violation shall be deemed to have occurred when any
2 of the following occurs:

3 (1) A discriminatory compensation decision or other practice
4 is adopted.

5 (2) An employe becomes subject to a discriminatory
6 compensation decision or other practice.

7 (3) An employe is affected by an application of a
8 discriminatory compensation decision or practice, including
9 each time wages, benefits or other compensations are paid,
10 resulting in whole or in part from a discriminatory decision or
11 practice.

12 Section 8. Penalties.--(a) Any employer who wilfully and
13 knowingly violates any provisions of this act, or who
14 retaliates, discharges or in any other manner discriminates
15 against any employe because such employe has made any complaint
16 to his employer, the secretary or any other person who
17 instituted or caused to be instituted any proceeding under or
18 related to this act, or has testified or is about to testify in
19 any such proceedings, shall, upon conviction thereof in a
20 summary proceeding, be sentenced to pay a fine of not less than
21 [fifty dollars (\$50) nor more than two hundred dollars (\$200)]
22 two thousand five hundred dollars (\$2,500) nor more than five
23 thousand dollars (\$5,000), and, upon default in such fine and
24 costs, shall undergo imprisonment for not less than thirty days
25 nor more than sixty days. [Each] Discrimination against each
26 individual employe and each day such a violation continues shall
27 constitute a separate offense.

28 (b) Any employer who fails to keep the records required
29 under this act or to furnish such records to the secretary upon
30 request, or who falsifies such records or who hinders, delays or

1 otherwise interferes with the secretary or his authorized
2 representatives in the performance of his duties in the
3 enforcement of this act, or refuses such official entry into any
4 establishment which [he] the employe is authorized by this act
5 to inspect, shall, upon conviction thereof in a summary
6 proceeding, be sentenced to pay a fine of not less than [fifty
7 dollars (\$50) nor more than two hundred dollars (\$200)] two
8 thousand five hundred dollars (\$2,500) nor more than five
9 thousand dollars (\$5,000), and, upon default in such fine and
10 costs, shall undergo imprisonment for not less than thirty days
11 nor more than sixty days. Each day such a violation continues
12 shall constitute a separate offense.

13 Section 6. This act shall take effect in 60 days.