

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 98 Session of 2023

INTRODUCED BY BULLOCK, ABNEY, SHUSTERMAN, O'MARA, BURGOS, SAPPEY, MADDEN, HILL-EVANS, CIRESI, GIRAL, SANCHEZ, RABB, SCHLOSSBERG, DELLOSO, PROBST, HANBIDGE, GALLOWAY, HOWARD, D. WILLIAMS, FIEDLER, KRAJEWSKI, PARKER, DEASY, STURLA, FREEMAN, KINKEAD, OTTEN, N. NELSON, FRANKEL, DALEY, GREEN AND BOYD, MARCH 7, 2023

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 27, 2024

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 POWERS OF SECRETARY, FOR collection of unpaid wages, FOR <--
8 RECORDS AND REPORTING and for penalties; AND ESTABLISHING THE <--
9 EQUAL PAY ENFORCEMENT FUND.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

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

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

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

6 \* \* \*

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

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

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

22 \* \* \*

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

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

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

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

14 (2) a bona fide merit system, WHICH MUST BE COMMUNICATED IN <--  
15 WRITING TO ALL EMPLOYES SUBJECT TO THE MERIT SYSTEM, INCLUDE  
16 PREDETERMINED, OBJECTIVE EVALUATION CRITERIA AND INCLUDE REGULAR  
17 EVALUATION INTERVALS;

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

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

24 (a.1) An employer who is paying a wage rate differential in  
25 violation of this section shall not, in order to comply with the  
26 provisions of this section, reduce the wage rate of an employe.

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

29 (b) No labor organization, or its agents, representing  
30 employes of an employer having employes subject to any

1 provisions of this section, shall cause or attempt to cause such  
2 an employer to discriminate against an employe in violation of  
3 subsection (a) of this section.

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

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

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

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

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

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

1 employer.

2 (4) Seek from a current or former employer the previous  
3 wages of a prospective employe, except that an employer may seek  
4 to confirm prior wage information after an offer of employment  
5 with compensation has been made to the prospective employe and  
6 the prospective employe responds to the offer by providing prior  
7 wage information to support a wage higher than offered by the  
8 employer. Under these circumstances, the employer may only seek  
9 to confirm prior wages after obtaining written authorization by  
10 the prospective employe to do so.

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

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

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

19 (3) Assisting an investigation or otherwise participating in  
20 an action under this act.

21 (4) Disclosing, inquiring about or discussing  
22 wages, benefits or other compensation of the employe or  
23 another employe.

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

26 (d) An employer shall include the expected compensation or  
27 the range of expected compensation:

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

30 (2) to a prospective employe applying for employment upon

1 reasonable request.

2 Section 4. Sections 4, 5, 6 and 8 of the act are amended <--  
3 to read:

4 SECTION 4. POWERS OF SECRETARY.--(A) THE SECRETARY SHALL <--  
5 HAVE THE POWER, AND IT SHALL BE [HIS] THE DUTY OF THE SECRETARY,  
6 TO CARRY OUT AND ADMINISTER THE PROVISIONS OF THIS ACT.

7 (B) FOR THIS PURPOSE, THE SECRETARY OR [HIS] AN AUTHORIZED  
8 REPRESENTATIVE OF THE SECRETARY SHALL HAVE THE POWER TO ENTER  
9 THE ESTABLISHMENT OF ANY EMPLOYER TO INSPECT AND COPY PAYROLLS  
10 AND OTHER EMPLOYMENT RECORDS, TO COMPARE CHARACTER OF WORK AND  
11 OPERATIONS ON WHICH PERSONS EMPLOYED BY [HIM] THE EMPLOYER ARE  
12 ENGAGED, TO QUESTION SUCH PERSONS AND TO OBTAIN SUCH OTHER  
13 INFORMATION AS IS REASONABLY NECESSARY TO THE ADMINISTRATION AND  
14 ENFORCEMENT OF THIS ACT.

15 (C) THE SECRETARY SHALL HAVE THE POWER TO ISSUE SUCH RULES  
16 AND REGULATIONS CONSISTENT WITH THE PURPOSE AND PROVISIONS OF  
17 THIS ACT AS [HE] THE SECRETARY DEEMS NECESSARY TO MAKE EFFECTIVE  
18 THE PROVISIONS OF THIS ACT.

19 (D) THE SECRETARY SHALL HAVE THE POWER TO SUBPOENA  
20 WITNESSES, ADMINISTER OATHS, EXAMINE WITNESSES AND TAKE  
21 TESTIMONY OR COMPEL THE PRODUCTION OF DOCUMENTS. THE SECRETARY  
22 MAY PETITION THE COMMONWEALTH COURT TO ENFORCE ANY ORDER OR  
23 SUBPOENA ISSUED UNDER THIS ACT.

24 (E) THE SECRETARY SHALL HAVE THE POWER TO IMPOSE  
25 ADMINISTRATIVE FINES UNDER SECTION 8.

26 Section 5. [Collection of Unpaid Wages] Relief.--(a) An  
27 employer who wilfully and knowingly violates the provisions of  
28 section 3 or 3.1 of this act shall be liable to the employe or  
29 employes affected in the amount of [their] the employe's unpaid  
30 wages and in addition, an equal amount as liquidated damages,

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

23 (b) [Any action pursuant to the provisions of this act must  
24 be brought within two years from the date upon which the  
25 violation complained of occurs.] An action under this act shall  
26 be commenced within three years of the date of the alleged  
27 violation. A violation shall be deemed to have occurred when any  
28 of the following occurs:

29 (1) A discriminatory compensation decision or other practice  
30 is adopted.

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

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

8 SECTION 6. RECORDS AND REPORTING.--EVERY EMPLOYER SUBJECT TO <--  
9 THIS ACT SHALL MAKE, KEEP AND MAINTAIN SUCH RECORDS OF THE WAGES  
10 AND WAGE RATES, JOB CLASSIFICATIONS AND OTHER TERMS AND  
11 CONDITIONS OF EMPLOYMENT OF THE PERSONS EMPLOYED BY [HIM] THE  
12 EMPLOYER, AND SHALL PRESERVE SUCH RECORDS FOR SUCH PERIOD AND  
13 SHALL MAKE SUCH REPORTS THEREFROM, AS THE SECRETARY SHALL  
14 PRESCRIBE.

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



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

16 (C) THE SECRETARY MAY IMPOSE AN ADMINISTRATIVE PENALTY OF <--  
17 NOT LESS THAN TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) NOR  
18 MORE THAN FIVE THOUSAND DOLLARS (\$5,000) FOR EACH VIOLATION OF  
19 THIS ACT. THIS SUBSECTION SHALL BE SUBJECT TO 2 PA.C.S. CHS. 5  
20 SUBCH. A (RELATING TO PRACTICE AND PROCEDURE OF COMMONWEALTH  
21 AGENCIES) AND 7 SUBCH. A (RELATING TO JUDICIAL REVIEW OF  
22 COMMONWEALTH AGENCY ACTION).

23 (D) THE SECRETARY MAY ORDER AN EMPLOYER TO TAKE A CORRECTIVE  
24 ACTION WHICH THE SECRETARY DEEMS NECESSARY TO ADDRESS A  
25 VIOLATION OF THIS ACT.

26 SECTION 5. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

27 SECTION 8.1. EQUAL PAY ENFORCEMENT FUND.--THE EQUAL PAY  
28 ENFORCEMENT FUND IS ESTABLISHED AS A SEPARATE FUND IN THE STATE  
29 TREASURY. THE FOLLOWING SHALL APPLY:

30 (1) ALL FINES IMPOSED AND COLLECTED UNDER SECTION 8 SHALL BE

1 DEPOSITED INTO THE EQUAL PAY ENFORCEMENT FUND.

2 (2) THE MONEY IN THE EQUAL PAY ENFORCEMENT FUND IS

3 APPROPRIATED ON A CONTINUING BASIS TO THE DEPARTMENT TO BE USED

4 FOR ENFORCEMENT OF THIS ACT.

5 Section ~~5~~ 6. This act shall take effect in ~~60 days~~ ONE YEAR. <--