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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1200 Session of  
2018

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INTRODUCED BY TARTAGLIONE, STREET, FARNESE, SCHWANK AND HUGHES,  
JUNE 15, 2018

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REFERRED TO LABOR AND INDUSTRY, JUNE 15, 2018

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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, for wage rates and for  
6 collection of unpaid wages.

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

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

12 Section 2. Definitions.--(a) The term "employee," as used in  
13 this act, shall mean any person employed for hire in any  
14 [lawful] business, industry, trade or profession, or in any  
15 other [lawful] enterprise in which individuals are gainfully  
16 employed; including individuals employed by the Commonwealth or  
17 any of its political subdivisions, including public bodies[:  
18 Provided, however, That the term "employee" as used in this act  
19 shall not apply to any person or persons who is or are subject  
20 to section 6 of the Federal Fair Labor Standards Act (Act of

1 June 25, 1938, as amended)].

2 \* \* \*

3 (e.1) The term "wages" includes all earnings of an employe,  
4 regardless of whether determined on time, task, piece,  
5 commission or other method of calculation, including salaries  
6 based on annual or other basis. The term "wages" also includes  
7 fringe benefits, wage supplements or other compensation, whether  
8 payable by the employer from funds of the employer or from  
9 amounts withheld from the employe's pay by the employer.

10 (e.2) The term "comparable work" shall mean work that is  
11 substantially similar in that it requires substantially similar  
12 skill, effort and responsibility and is performed under similar  
13 working conditions. A job title or job description alone shall  
14 not determine comparability.

15 (e.3) The term "working conditions" shall include the  
16 circumstances customarily taken into consideration in setting  
17 salary or wages, including, but not limited to, reasonable shift  
18 differentials, physical surroundings and hazards encountered by  
19 employes performing a job.

20 \* \* \*

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

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

1 conditions], except where [such payment is made pursuant to (1)  
2 a seniority system; (2) a merit system; (3) a system which  
3 measures earnings by quantity or quality of production; or (4) a  
4 differential based on any other factor other than sex: Provided,  
5 That any] the employer demonstrates:

6 (1) The wage differential is based upon one or more of the  
7 following factors:

8 (i) A bona fide seniority system. Time spent on leave due to  
9 a pregnancy-related condition and protected parental, family and  
10 medical leave shall not reduce seniority.

11 (ii) A bona fide merit system.

12 (iii) A bona fide system which measures earnings by quantity  
13 or quality of production or sales.

14 (iv) A bona fide factor other than sex, including education,  
15 training or experience.

16 (2) Each factor relied upon is applied reasonably.

17 (3) The one or more factors relied upon account for the  
18 entire wage differential.

19 (4) The job title or job description alone does not  
20 determine if two jobs are comparable.

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

25 (a.2) The bona fide factor defense described under  
26 subsection (a) (1) (iv):

27 (1) Shall apply only if the employer demonstrates that the  
28 bona fide factor:

29 (i) is not based upon or derived from a sex-based  
30 differential in compensation;

1 (ii) is job-related with respect to the position in  
2 question; and  
3 (iii) is consistent with business necessity. For purposes of  
4 this subparagraph, "business necessity" means an overriding  
5 legitimate business purpose such that the factor relied upon  
6 effectively fulfills the business purpose it is supposed to  
7 serve.

8 (2) Shall not apply if the employe demonstrates that an  
9 alternative business practice exists that would serve the same  
10 business purpose without producing the wage differential.

11 (b) No labor organization, or its agents, representing  
12 employes of an employer having employes subject to any  
13 provisions of this section, shall cause or attempt to cause such  
14 an employer to discriminate against an employe in violation of  
15 subsection (a) of this section.

16 Section 3. Section 5(b) of the act is amended and the  
17 section is amended by adding a subsection to read:

18 Section 5. Collection of Unpaid Wages.--\* \* \*

19 (a.1) The Attorney General may also bring an action to  
20 collect unpaid wages on behalf of one or more employes, as well  
21 as damages, equitable relief and attorney fees and costs. The  
22 costs and attorney fees shall be paid to the Commonwealth. The  
23 Attorney General shall not be required to pay any filing fee or  
24 other cost in connection with the action.

25 (b) Any action pursuant to the provisions of this act must  
26 be brought within two years from the date upon which the  
27 violation complained of occurs[.] unless the violation is a  
28 wilful violation, in which case the action must be brought  
29 within three years from the date of the violation. For the  
30 purposes of this section, a violation occurs when:

1 (1) a discriminatory wage decision or practice is adopted;

2 (2) an individual is subject to a discriminatory wage

3 decision or practice; or

4 (3) an individual is affected by application of a

5 discriminatory wage decision or practice, including each time

6 wages paid result, in whole or in part, from a discriminatory

7 wage decision or practice.

8 Section 4. This act shall take effect in 30 days.