

2018 -- H 7242

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LC003470  
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - UNLAWFUL EMPLOYMENT  
PRACTICES

Introduced By: Representatives Vella-Wilkinson, Lombardi, Casimiro, Hull, and  
Jacquard

Date Introduced: January 19, 2018

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-5-7 of the General Laws in Chapter 28-5 entitled "Fair  
2 Employment Practices" is hereby amended to read as follows:

3 **28-5-7. Unlawful employment practices.**

4 It shall be an unlawful employment practice:

5 (1) For any employer:

6 (i) To refuse to hire any applicant for employment because of his or her race or color,  
7 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of  
8 ancestral origin;

9 (ii) Because of those reasons, to discharge an employee or discriminate against him or her  
10 with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or any  
11 other matter directly or indirectly related to employment. However, if an insurer or employer  
12 extends insurance related benefits to persons other than or in addition to the named employee,  
13 nothing in this subdivision shall require those benefits to be offered to unmarried partners of  
14 named employees;

15 (iii) In the recruiting of individuals for employment or in hiring them, to utilize any  
16 employment agency, placement service, training school or center, labor organization, or any other  
17 employee referring source which the employer knows, or has reasonable cause to know,  
18 discriminates against individuals because of their race or color, religion, sex, sexual orientation,

1 gender identity or expression, disability, age, or country of ancestral origin;

2 (iv) To refuse to reasonably accommodate an employee's or prospective employee's  
3 disability unless the employer can demonstrate that the accommodation would pose a hardship on  
4 the employer's program, enterprise, or business; or

5 (v) When an employee has presented to the employer an internal complaint alleging  
6 harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual  
7 orientation, gender identity or expression, or country of ancestral origin, to refuse to disclose in a  
8 timely manner in writing to that employee the disposition of the complaint, including a  
9 description of any action taken in resolution of the complaint; provided, however, no other  
10 personnel information shall be disclosed to the complainant.

11 (2) (i) For any employment agency to fail or refuse to properly classify or refer for  
12 employment or otherwise discriminate against any individual because of his or her race or color,  
13 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of  
14 ancestral origin; or

15 (ii) For any employment agency, placement service, training school or center, labor  
16 organization, or any other employee referring source to comply with an employer's request for the  
17 referral of job applicants if the request indicates either directly or indirectly that the employer will  
18 not afford full and equal employment opportunities to individuals regardless of their race or color,  
19 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of  
20 ancestral origin;

21 (3) For any labor organization:

22 (i) To deny full and equal membership rights to any applicant for membership because of  
23 his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability,  
24 age, or country of ancestral origin;

25 (ii) Because of those reasons, to deny a member full and equal membership rights, expel  
26 him or her from membership, or otherwise discriminate in any manner against him or her with  
27 respect to his or her hire, tenure, compensation, terms, conditions or privileges of employment, or  
28 any other matter directly or indirectly related to membership or employment, whether or not  
29 authorized or required by the constitution or bylaws of the labor organization or by a collective  
30 labor agreement or other contract;

31 (iii) To fail or refuse to classify properly or refer for employment, or otherwise to  
32 discriminate against any member because of his or her race or color, religion, sex, sexual  
33 orientation, gender identity or expression, disability, age, or country of ancestral origin; or

34 (iv) To refuse to reasonably accommodate a member's or prospective member's disability

1 unless the labor organization can demonstrate that the accommodation would pose a hardship on  
2 the labor organization's program, enterprise, or business;

3 (4) Except where based on a bona fide occupational qualification certified by the  
4 commission or where necessary to comply with any federal mandated affirmative action  
5 programs, for any employer or employment agency, labor organization, placement service,  
6 training school or center, or any other employee referring source, prior to employment or  
7 admission to membership of any individual, to:

8 (i) Elicit or attempt to elicit any information directly or indirectly pertaining to his or her  
9 race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or  
10 country of ancestral origin;

11 (ii) Make or keep a record of his or her race or color, religion, sex, sexual orientation,  
12 gender identity or expression, disability, age, or country of ancestral origin;

13 (iii) Use any form of application for employment, or personnel or membership blank  
14 containing questions or entries directly or indirectly pertaining to race or color, religion, sex,  
15 sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;

16 (iv) Print or publish or cause to be printed or published any notice or advertisement  
17 relating to employment or membership indicating any preference, limitation, specification, or  
18 discrimination based upon race or color, religion, sex, sexual orientation, gender identity or  
19 expression, disability, age, or country of ancestral origin; or

20 (v) Establish, announce, or follow a policy of denying or limiting, through a quota system  
21 or otherwise, employment or membership opportunities of any group because of the race or color,  
22 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of  
23 ancestral origin of that group;

24 (5) For any employer or employment agency, labor organization, placement service,  
25 training school or center, or any other employee referring source to discriminate in any manner  
26 against any individual because he or she has opposed any practice forbidden by this chapter, or  
27 because he or she has made a charge, testified, or assisted in any manner in any investigation,  
28 proceeding, or hearing under this chapter;

29 (6) For any person, whether or not an employer, employment agency, labor organization,  
30 or employee, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to  
31 be an unlawful employment practice, or to obstruct or prevent any person from complying with  
32 the provisions of this chapter or any order issued pursuant to this chapter, or to attempt directly or  
33 indirectly to commit any act declared by this section to be an unlawful employment practice;

34 (7) For any employer to include on any application for employment, except applications

1 for law enforcement agency positions or positions related to law enforcement agencies, a question  
2 inquiring or to otherwise inquire either orally or in writing whether the applicant has ever been  
3 arrested, charged with or convicted of any crime; provided, that:

4 (i) If a federal or state law or regulation creates a mandatory or presumptive  
5 disqualification from employment based on a person's conviction of one or more specified  
6 criminal offenses, an employer may include a question or otherwise inquire whether the applicant  
7 has ever been convicted of any of those offenses; or

8 (ii) If a standard fidelity bond or an equivalent bond is required for the position for which  
9 the applicant is seeking employment and his or her conviction of one or more specified criminal  
10 offenses would disqualify the applicant from obtaining such a bond, an employer may include a  
11 question or otherwise inquire whether the applicant has ever been convicted of any of those  
12 offenses; and

13 (iii) Notwithstanding, any employer may ask an applicant for information about his or her  
14 criminal convictions at the first interview or thereafter, in accordance with all applicable state and  
15 federal laws.

16 (8) (i) For any person who, on June 7, 1988, is providing either by direct payment or by  
17 making contributions to a fringe benefit fund or insurance program, benefits in violation with §§  
18 28-5-6, 28-5-7 and 28-5-38, until the expiration of a period of one year from June 7, 1988 or if  
19 there is an applicable collective bargaining agreement in effect on June 7, 1988, until the  
20 termination of that agreement, in order to come into compliance with §§ 28-5-6, 28-5-7 and 28-5-  
21 38, to reduce the benefits or the compensation provided any employee on June 7, 1988, either  
22 directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance  
23 program.

24 (ii) Where the costs of these benefits on June 7, 1988 are apportioned between employers  
25 and employees, the payments or contributions required to comply with §§ 28-5-6, 28-5-7 and 28-  
26 5-38 may be made by employers and employees in the same proportion.

27 (iii) Nothing in this section shall prevent the readjustment of benefits or compensation for  
28 reasons unrelated to compliance with §§ 28-5-6, 28-5-7 and 28-5-38.

29 (9) For any prospective employer to inquire about a prospective employee's wage and  
30 salary history before an offer of employment with compensation has been negotiated and made to  
31 the prospective employee unless a prospective employee has voluntarily disclosed such  
32 information. In the case of positions with a salary over one hundred twenty-five thousand dollars  
33 (\$125,000), the employer may require prospective employees to disclose salary range prior to a  
34 firm offer of employment.

1 SECTION 2. Section 28-6-18 of the General Laws in Chapter 28-6 entitled "Wage  
2 Discrimination Based on Sex" is hereby amended to read as follows:

3 **28-6-18. Wage differentials based on sex prohibited.**

4 (a) No employer shall discriminate in the payment of wages as between the sexes or shall  
5 pay any female in his or her employ salary or wage rates less than the rates paid to male  
6 employees for equal work or work on the same operations.

7 (b) Nothing contained in this section shall prohibit a variation in rates of pay based upon  
8 either difference in:

9 (1) Seniority, ~~experience, training, skill, or ability~~ provided time spent on leave due to a  
10 pregnancy-related condition or protected family and medical leave shall not reduce seniority;

11 (2) Duties and services performed, either regularly or occasionally;

12 (3) The shift or time of day worked; ~~or~~

13 (4) Availability for other operations or any other reasonable differentiation except  
14 difference in sex; or

15 (5) Experience, training, skill, or ability.

16 (c) Except as provided in this section, any provision in any contract, agreement, or  
17 understanding entered into after passage of this act establishing a variation in rates of pay as  
18 between the sexes, shall be null and void.

19 SECTION 3. Chapter 28-6 of the General Laws entitled "Wage Discrimination Based on  
20 Sex" is hereby amended by adding thereto the following section:

21 **28-6-20.1. Defenses.**

22 (a) It shall be an affirmative defense in any action against an employer alleging a  
23 violation of this chapter that the employer, within the previous three (3) years and prior to the  
24 commencement of the action, has completed a self-evaluation of its pay practices in good faith  
25 and can demonstrate that reasonable progress has been made to eliminate wage differentials based  
26 on gender for equal work.

27 (b) An employer shall not use an employee's prior wage and salary history as a defense to  
28 such action.

29 SECTION 4. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

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1           This act would prohibit an employer from inquiring about a prospective employee's wage  
2   and salary history before an offer of employment with compensation has been negotiated. This  
3   act would also allow seniority as a variation in rates of pay so long as the seniority is not reduced  
4   by time spent on leave due to a pregnancy-related condition or protected family and medical  
5   leave.

6           This act would take effect upon passage.

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