

HOUSE BILL 903

By Clemmons

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 50, relative to sex discrimination.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 2, Part 2, is amended by deleting the part and substituting instead the following:

50-2-201. This part shall be known and may be cited as the “Tennessee Pay Equality Act.”

50-2-202. As used in this part, unless the context otherwise requires:

(1) “Commissioner” means the commissioner of labor and workforce development;

(2) “Employ” includes to suffer or permit to work;

(3) “Employee”:

(A) Means any individual employed by any employer within this state;

and

(B) Does not include any individual who is entitled to the equal pay provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.);

(4) “Employer” includes any person acting in the interest of any employer, directly or indirectly; and

(5) “Wage rate” means all compensation for employment, including payments in kind and amounts paid by employers for employee benefits as defined by the commissioner in rules promulgated under this part.

50-2-203.

(a) No employer shall discriminate between employees on the basis of sex by paying any employee a wage rate less than the wage rates the employer pays to any employee of the opposite sex for comparable work on jobs the performance of which require comparable skill, effort, and responsibility, and which are performed under similar working conditions. However, nothing in this part prohibits wage rate differentials based on:

- (1) A seniority system;
- (2) A merit system;
- (3) A system that measures earnings by quality or quantity of production;

or

(4) A differential based on a bona fide factor other than sex, such as education, training, or experience, except that the bona fide factor defense applies only if the employer demonstrates that:

(A) The factor:

- (i) Is job-related with respect to the position in question; or
- (ii) Furthers a legitimate business purpose, except that this

subdivision (a)(4)(A)(ii) does not apply if the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing the differential, and that the employer has refused to adopt the alternative practice; and

(B) The factor was applied and used reasonably in light of the asserted justification.

(b) An employer that is not otherwise in compliance with this section shall not reduce the wages of any employee in order to achieve compliance.

(c) No employer shall discharge or in any other manner discriminate against any employee because the employee has:

(1) Taken any action to invoke or assist in any manner the enforcement of this part; or

(2) Inquired about, discussed, or otherwise disclosed the wages of the employee or another employee.

(d) This section shall apply to applicants for employment if the applicants, upon employment by the employer, would be subject to this part.

50-2-204.

(a) The commissioner shall administer this part and promulgate rules, consistent with this part or the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary or appropriate to carry out this part.

(b) The commissioner shall endeavor to eliminate pay practices unlawful under this part by informal methods of conference, conciliation, and persuasion, and to supervise the payment of wages owing to any employee under this part.

(c) The commissioner shall develop guidelines to enable employers to evaluate job categories based on objective criteria, such as educational requirements, skill requirements, independence, working conditions, and responsibility, including decision-making responsibility and de facto supervisory responsibility.

(d) The guidelines developed under this section shall be designed to enable employers to voluntarily compare wages paid for different jobs to determine if the pay scales involved adequately and fairly reflect the educational requirements, skill requirements, independence, working conditions, and responsibility for each job with the goal of eliminating unfair pay disparities between occupations traditionally dominated by men or women.

(e) The commissioner shall make the guidelines developed under this section available to the governor, the speaker of the senate, and the speaker of the house of representatives, no later than September 1, 2015.

50-2-205.

(a)

(1) Any employer who violates § 50-2-203 shall be liable to the employee or employees affected in the amount of their unpaid wages, and in instances of an employer knowingly violating § 50-2-203 in employee suits under subsection (b), up to an additional equal amount of unpaid wages as liquidated damages.

(2) For the second established violation of this part in a separate judicial proceeding distinct from the first, any employer who violates § 50-2-203 shall be liable to the employee or employees affected in the amount of their unpaid wages, and in instances of an employer knowingly violating § 50-2-203 in employee suits under subsection (b), up to an additional two (2) times the amount of unpaid wages as liquidated damages.

(3) For the third and subsequent established violations of this part in a separate judicial proceeding distinct from the first and second, any employer who violates § 50-2-203 shall be liable to the employee or employees affected in the amount of their unpaid wages, and in instances of an employer knowingly violating § 50-2-203 in employee suits under subsection (b), up to an additional three (3) times the amount of unpaid wages as liquidated damages.

(b) An action to recover wages may be maintained in any court of competent jurisdiction by any one (1) or more employees. The court shall, in addition to any judgment awarded to the employee or employees, allow reasonable attorney's fees and any reasonable costs of pursuing the action to be paid by the employer.

(c) No agreement by any employee to work for less than the wages to which the employee is entitled under this part shall bar any action under this section.

(d) At the written request of any employee claiming to have been paid less than the wage to which the employee is entitled under this part, the commissioner may bring any legal action necessary on behalf of the employee to collect such claim for unpaid wages. The commissioner shall not be required to pay any filing fee or other cost in connection with the action and may join various claims against the employer into one (1) cause of action.

(e) Any employer who violates § 50-2-203 shall additionally be liable for compensatory or punitive damages as may be appropriate, except that the government of the United States and of this state and its political subdivisions shall not be liable for punitive damages.

(f) Any action brought to enforce this part may be maintained as a class action as provided by the Tennessee Rules of Civil Procedure.

50-2-206.

A court action under this part shall be commenced no later than two (2) years after the cause of action occurs. A court action shall be considered commenced:

(1) In the case of any individual claimant, on the date when the complaint is filed if the claimant is specifically named as a party plaintiff in the complaint, or if the claimant's name did not so appear, on the subsequent date on which the claimant's name is added as a party plaintiff in the action; or

(2) In the case of a class action brought to enforce this part, on the date on which the individual becomes a party plaintiff to the class action.

50-2-207.

(a) It is an offense for an employer to:

(1) Violate this part; or

(2) Discharge or in any other manner discriminate against any employee

because the employee:

(A) Has made a complaint to the employer, the commissioner, or any other person;

(B) Has instituted or caused to be instituted any proceedings under this part; or

(C) Has testified or is about to testify in any proceeding under this part.

(b) A violation of subsection (a) is a Class A misdemeanor.

50-2-208.

(a) As funds become available, beginning February 15, 2016, and biennially thereafter, the economic council on women, created by § 4-50-101, may:

(1) Conduct research to determine:

(A) The wage disparities that exist between men, women, and minorities assigned to the same job classifications;

(B) The factors that cause, or that tend to cause, such disparities, including segregation of women, men, and minorities within the same job classifications;

(C) The consequences of the disparities on the economy of this state and on affected families; and

(D) Recommendations that are likely to lead to the elimination of the disparities; and

(2) Provide training to:

(A) Commission employees and affected individuals and entities on matters involving discrimination in the payment of wages; and

(B) Girls and women on how to develop negotiation skills.

(b) The council's research may include the results of its findings as well as recommendations, legislative and otherwise, for the elimination and prevention of disparities in wages between men, women, and minorities.

(c)

(1) The council shall make its research report to the commissioner of labor and workforce development, the governor, the speaker of the senate, and the speaker of the house of representatives.

(2) By September 1, 2016, and biennially thereafter, the council shall make its report regarding training to the commissioner of labor and workforce development, the governor, the speaker of the senate, and the speaker of the house of representatives.

SECTION 2. For the purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2015, the public welfare requiring it.