

SENATE BILL 1664

By Harper

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 2, Part 2, 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 Part 2 in its entirety and by substituting instead the following language as a new Part 2:

§ 50-2-201.

This part shall be known and may be cited as the "Pay Equity in the Workplace 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" means any individual employed by any employer within the state of Tennessee, including individuals employed by the state of Tennessee but not by its political subdivisions, but does not include any individual who is entitled to the equal pay provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.), as amended;

(4) "Employer" includes any person acting in the interest of any employer, directly or indirectly, and includes the state of Tennessee but not its political subdivisions; 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 regulations issued under this part.

§ 50-2-203.

(a) No employer shall discriminate between employees on the basis of sex by paying any employee salary or wage rates less than the 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 shall prohibit wage 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 shall apply only if the employer demonstrates that:

(A) Such 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) shall not apply where the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential, and that the employer has refused to adopt such alternative practice; and

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

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

(c) No employer may 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 applies to applicants for employment if the applicants, upon employment by the employer, would be subject to this part.

§ 50-2-204.

(a) The commissioner has the power and duty to carry out and administer this part, including the power to issue rules and regulations, not inconsistent with the purpose of this part or the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, as the commissioner considers necessary or appropriate to carry out its provisions.

(b) The commissioner is authorized to 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 establish a program under which the governor shall provide for the recognition of employers who, pursuant to a voluntary job evaluation conducted by the employer, adjust their wage scales

using the guidelines developed under this section to ensure that women are paid fairly in comparison to men. Any such adjustments shall not include the lowering of wages paid to men.

(d) The commissioner may provide technical assistance to assist an employer in carrying out an evaluation under subsection (c).

(e) 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.

(f) The guidelines developed under this section shall be designed to enable employers voluntarily to 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 such job with the goal of eliminating unfair pay disparities between occupations traditionally dominated by men or women.

(g) The commissioner shall make the guidelines developed under this section available to the governor, who may in turn transmit it to the speakers of both houses of the general assembly, no later than September 1, 2010.

§ 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. Additionally, in instances of an employer who knowingly violates § 50-2-203, and an employee or employees bring an action under subsection (b),

the employer shall be liable for liquidated damages in an amount not to exceed the 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 proceeding, any employer who violates § 50-2-203 shall be liable to the employee or employees affected in the amount of their unpaid wages. Additionally, in instances of an employer who knowingly violates § 50-2-203, and an employee or employees bring an action under subsection (b), the employer shall be liable for liquidated damages in an amount not to exceed two (2) times the amount of unpaid wages as liquidated damages.

(3) For the third established violation of this part in a separate judicial proceeding distinct from the first and second proceedings, any employer who violates § 50-2-203 shall be liable to the employee or employees affected in the amount of their unpaid wages. Additionally, in instances of an employer who knowingly violates § 50-2-203, and an employee or employees bring an action under subsection (b), the employer shall be liable for liquidated damages in an amount not to exceed three (3) times the amount of unpaid wages as liquidated damages.

(b) An action to recover unpaid wages may be maintained in any court of competent jurisdiction by any one (1) or more employees. The court shall, in cases of violation, in addition to any judgment awarded to the plaintiff or plaintiffs, order reasonable attorney's fees and the cost of the action to be paid by the defendant.

(c) No agreement by any employee to work for less than the wages to which the employee is entitled under this part shall be a bar to any such action, or to a voluntary wage restitution of the full amount due under this part.

(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 in behalf of the employee to collect unpaid wages. The commissioner shall not be required to pay any filing fee, or other cost in connection with any such action. The commissioner shall have the power to join various claims against the employer in one (1) cause of action.

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

(f) Notwithstanding any other law to the contrary, 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.

Court action under this part may 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 such 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 violate this part, or to discharge or in any other manner discriminate against any employee because such employee:

(1) Made a complaint to that employee's employer, the commissioner, or any other person; or

(2) Instituted or caused to be instituted any proceedings under or related to this part, or has testified or is about to testify in any such proceeding.

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

§ 50-2-208.

(a) There is established the Tennessee Commissioner of Labor and Workforce Development Award for Pay Equity in the Workplace, which shall be evidenced by a medal bearing the inscription "Tennessee Commissioner of Labor and Workforce Development Award for Pay Equity in the Workplace". The medal shall be of such design and materials, and bear such additional inscriptions, as the commissioner may prescribe.

(b) To qualify to receive an award under this section a business shall:

(1) Submit a written application to the commissioner, at such time, in such manner, and containing such information as the commissioner may require, including at a minimum information that

demonstrates that the business has made substantial effort to eliminate pay disparities between men and women, and deserves special recognition as a consequence; and

(2) Meet such additional requirements and specifications as the commissioner determines to be appropriate.

(c)

(1) After receiving recommendations from the commissioner, the governor, or the designated representative of the governor, shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) The governor or the designated representative of the governor shall present the award under this section with such ceremonies as the governor or the designated representative of the governor may determine to be appropriate.

(d) In this section, the term "business" includes:

(1) Any of the following entities:

(A) A corporation, including a nonprofit corporation;

(B) A partnership;

(C) A professional association;

(D) A labor organization; and

(E) A business entity similar to an entity described in any of subdivisions (d)(1)(A)-(D);

(2) An entity carrying out an education referral program, a training program, such as an apprenticeship or management training program, or a similar program; and

(3) An entity carrying out a joint program, formed by a combination of any entities described in subdivision (d)(1) or (d)(2).

§ 50-2-209.

(a) Beginning on June 1, 2009, and as funds become available, the Economic Council on Women may:

(1) Conduct research to determine:

(A) What wage disparities exist between men and women assigned to the same job classifications and minorities and non-minorities assigned to the same job classifications;

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

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

(D) Recommendations that are likely to lead to the elimination of such 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 and women, and between minorities and non-minorities.

(c)

(1) The council shall make its research report to the commissioner of labor and workforce development, who may in turn transmit it to the governor and the speakers of both houses of the general assembly.

(2) On February 15, 2010, and annually thereafter, the council shall make its report of training provided under this part to the commissioner of labor and workforce development, who may in turn transmit it to the governor and the speakers of both houses of the general assembly.

SECTION 2. This act shall take effect January 1, 2009, the public welfare requiring it.