

**Senator Jacob L. Anderegg** proposes the following substitute bill:

**EQUAL PAY AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jacob L. Anderegg**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to employee pay in the state.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires certain employers in the state to adopt and disclose to each employee uniform criteria that the employer uses to determine whether to change an employee's compensation or benefits based on the employee's performance;
- ▶ instructs the Department of Workforce Services to conduct a study on whether there is a difference in pay between men and women in the state;
- ▶ provides that the Department of Workforce Services shall create and maintain pay indices for certain occupations that state the current pay range in the state for each occupation; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **35A-1-104.5**, as last amended by Laws of Utah 2015, Chapter 283

29 **35A-4-312**, as last amended by Laws of Utah 2016, Chapter 296

30 **63I-2-235**, as last amended by Laws of Utah 2016, Chapter 278

31 ENACTS:

32 **34-52-101**, Utah Code Annotated 1953

33 **34-52-102**, Utah Code Annotated 1953

34 **34-52-201**, Utah Code Annotated 1953

35 **35A-5-501**, Utah Code Annotated 1953



37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section **34-52-101** is enacted to read:

39 **CHAPTER 52. EMPLOYEE PERFORMANCE ACT**

40 **Part 1. General Provisions**

41 **34-52-101. Title.**

42 This chapter is known as the "Employee Performance Act."

43 Section 2. Section **34-52-102** is enacted to read:

44 **34-52-102. Definitions.**

45 As used in this chapter:

46 (1) "Employee" means an employee who works an average of at least 30 hours per  
47 week in a calendar year.

48 (2) "Employer" means a person that employs 15 or more individuals in the state for  
49 each working day in each of 20 weeks or more in the current or preceding calendar year.

50 Section 3. Section **34-52-201** is enacted to read:

51 **Part 2. Employee Evaluations**

52 **34-52-201. Written criteria required.**

53 (1) Each employer shall adopt and disclose to each employee written criteria that the  
54 employer uses to determine whether to change an employee's compensation or benefits based  
55 on the employee's performance.

56 (2) An employer may adopt different criteria for each type of position, but shall apply

57 the criteria uniformly to each employee that holds the type of position to which the criteria  
58 apply.

59 (3) An employer may not change the criteria described in the section that apply to an  
60 employee less than six months before the day on which the employer considers whether to  
61 change the employee's compensation or benefits based on the employee's performance.

62 Section 4. Section **35A-1-104.5** is amended to read:

63 **35A-1-104.5. Other department duties -- Strategic plan for health system reform**  
64 **-- Reporting suspected misuse of a social security number -- Wage study.**

65 (1) The department shall work with the Department of Health, the Insurance  
66 Department, the Governor's Office of Economic Development, and the Legislature to develop  
67 the health system reform in accordance with Title 63N, Chapter 11, Health System Reform  
68 Act.

69 (2) In the process of determining an individual's eligibility for a public benefit or  
70 service under this title or under federal law, if the department determines that a valid Social  
71 Security number is being used by an unauthorized individual, the department shall:

72 (a) inform the individual who the department determines to be the likely actual owner  
73 of the social security number or, if the likely actual owner is a minor, the minor's parent or  
74 guardian, of the suspected misuse; and

75 (b) subject to federal law, provide information of the suspected misuse to an  
76 appropriate law enforcement agency responsible for investigating identity fraud.

77 (3) If the department learns or determines that providing information under Subsection  
78 (2)(b) is prohibited by federal law, the department shall notify the Legislative Management  
79 Committee.

80 (4) (a) The department shall conduct a study that analyzes any difference in pay  
81 between men and women in the state.

82 (b) The study described in Subsection (4)(a) shall:

83 (i) use the most recent wage data for workers in the state available to the department;  
84 and

85 (ii) to the extent possible, control for other variables, including education, years of  
86 experience, occupation, and industry.

87 (c) The department shall present the study described in this Subsection (4) to the

88 Economic Development and Workforce Services Interim Committee and the Women in  
89 Economy Commission no later than November 30, 2018.

90 (d) The Driver License Division shall, in accordance with federal law, coordinate with  
91 the department to provide the department information necessary to complete the study  
92 described in this Subsection (4).

93 Section 5. Section **35A-4-312** is amended to read:

94 **35A-4-312. Records.**

95 (1) (a) An employing unit shall keep true and accurate work records containing  
96 information the department may prescribe by rule.

97 (b) A record shall be open to inspection and subject to being copied by the division or  
98 its authorized representatives at a reasonable time and as often as necessary.

99 (c) An employing unit shall make a record available in the state for three years after the  
100 calendar year in which the services are rendered.

101 (2) The division may require from an employing unit a sworn or unsworn report with  
102 respect to a person employed by the employing unit that the division considers necessary for  
103 the effective administration of this chapter.

104 (3) Except as provided in this section or in Sections **35A-4-103** and **35A-4-106**,  
105 information obtained under this chapter or obtained from an individual may not be published or  
106 open to public inspection in a manner revealing the employing unit's or individual's identity.

107 (4) (a) The information obtained by the division under this section may not be used in  
108 court or admitted into evidence in an action or proceeding, except:

109 (i) in an action or proceeding arising out of this chapter;

110 (ii) if the Labor Commission enters into a written agreement with the division under  
111 Subsection (6)(b), in an action or proceeding by the Labor Commission to enforce:

112 (A) Title 34, Chapter 23, Employment of Minors;

113 (B) Title 34, Chapter 28, Payment of Wages;

114 (C) Title 34, Chapter 40, Utah Minimum Wage Act; or

115 (D) Title 34A, Utah Labor Code;

116 (iii) under the terms of a court order obtained under Subsection **63G-2-202(7)** and  
117 Section **63G-2-207**; or

118 (iv) under the terms of a written agreement between the Office of State Debt Collection

119 and the division as provided in Subsection (5).

120 (b) The information obtained by the division under this section shall be disclosed to:

121 (i) a party to an unemployment insurance hearing before an administrative law judge of  
122 the department or a review by the Workforce Appeals Board to the extent necessary for the  
123 proper presentation of the party's case; or

124 (ii) an employer, upon request in writing for information concerning a claim for a  
125 benefit with respect to a former employee of the employer.

126 (5) The information obtained by the division under this section may be disclosed to:

127 (a) an employee of the department in the performance of the employee's duties in  
128 administering this chapter or other programs of the department;

129 (b) an employee of the Labor Commission for the purpose of carrying out the programs  
130 administered by the Labor Commission;

131 (c) an employee of the Department of Commerce for the purpose of carrying out the  
132 programs administered by the Department of Commerce;

133 (d) an employee of the governor's office or another state governmental agency  
134 administratively responsible for statewide economic development, to the extent necessary for  
135 economic development policy analysis and formulation;

136 (e) an employee of another governmental agency that is specifically identified and  
137 authorized by federal or state law to receive the information for the purposes stated in the law  
138 authorizing the employee of the agency to receive the information;

139 (f) an employee of a governmental agency or workers' compensation insurer to the  
140 extent the information will aid in:

141 (i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against:

142 (A) a workers' compensation program; or

143 (B) public assistance funds; or

144 (ii) the recovery of overpayments of workers' compensation or public assistance funds;

145 (g) an employee of a law enforcement agency to the extent the disclosure is necessary  
146 to avoid a significant risk to public safety or in aid of a felony criminal investigation;

147 (h) an employee of the State Tax Commission or the Internal Revenue Service for the  
148 purposes of:

149 (i) audit verification or simplification;

- 150 (ii) state or federal tax compliance;
- 151 (iii) verification of a code or classification of the:
  - 152 (A) 1987 Standard Industrial Classification Manual of the federal Executive Office of
  - 153 the President, Office of Management and Budget; or
  - 154 (B) 2002 North American Industry Classification System of the federal Executive
  - 155 Office of the President, Office of Management and Budget; and
  - 156 (iv) statistics;
- 157 (i) an employee or contractor of the department or an educational institution, or other
- 158 governmental entity engaged in workforce investment and development activities under the
- 159 Workforce Innovation and Opportunity Act, 29 U.S.C. Sec. 3101 et seq., for the purpose of:
  - 160 (i) coordinating services with the department;
  - 161 (ii) evaluating the effectiveness of those activities; and
  - 162 (iii) measuring performance;
  - 163 (j) an employee of the Governor's Office of Economic Development, for the purpose of
  - 164 periodically publishing in the Directory of Business and Industry, the name, address, telephone
  - 165 number, number of employees by range, code or classification of an employer, and type of
  - 166 ownership of Utah employers;
  - 167 (k) the public for any purpose following a written waiver by all interested parties of
  - 168 their rights to nondisclosure;
  - 169 (l) an individual whose wage data is submitted to the department by an employer, if no
  - 170 information other than the individual's wage data and the identity of the employer who
  - 171 submitted the information is provided to the individual;
  - 172 (m) an employee of the Insurance Department for the purpose of administering Title
  - 173 31A, Chapter 40, Professional Employer Organization Licensing Act;
  - 174 (n) an employee of the Office of State Debt Collection for the purpose of collecting
  - 175 state accounts receivable as provided in Section [63A-3-502](#);
  - 176 (o) a creditor, under a court order, to collect on a judgment as provided in Section
  - 177 [35A-4-314](#); [~~or~~]
  - 178 (p) an employee of the Wage and Hour Division of the United States Department of
  - 179 Labor for the purpose of carrying out the programs administered by the Wage and Hour
  - 180 Division as permitted under 20 C.F.R. 603.5(e), if the information is subject to the payment of

181 costs described in 20 C.F.R. 603.8(d) and:

182 (i) is limited to:

183 (A) the name and identifying information of an employer found by the department to  
184 have misclassified one or more workers under Subsection 35A-4-204(3);

185 (B) the total number of misclassified workers for that employer; and

186 (C) the aggregate amount of misclassified wages for that employer;

187 (ii) an employer is given the opportunity to cure a misclassification of one or more  
188 workers, in a manner established by division rule in accordance with Title 63G, Chapter 3,  
189 Utah Administrative Rulemaking Act, before the information is disclosed as described in this  
190 Subsection (5)(p); and

191 (iii) an annual report regarding the benefit to the state from disclosure of information  
192 under this Subsection (5)(p) is provided to the department for inclusion in the department's  
193 annual report described in Section 35A-1-109[:]; or

194 (q) an employee of the Driver License Division for purposes of obtaining data  
195 necessary to complete the study described in Subsection 35A-1-104.5(4).

196 (6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5),  
197 with the exception of Subsections (5)(a), (g), and (o), may be made if:

198 (a) the division determines that the disclosure will not have a negative effect on:

199 (i) the willingness of employers to report wage and employment information; or

200 (ii) the willingness of individuals to file claims for unemployment benefits; and

201 (b) the agency enters into a written agreement with the division in accordance with  
202 rules made by the department.

203 (7) (a) The employees of a division of the department other than the Workforce  
204 Research and Analysis Division and the Unemployment Insurance Division or an agency  
205 receiving private information from the division under this chapter are subject to the same  
206 requirements of privacy and confidentiality and to the same penalties for misuse or improper  
207 disclosure of the information as employees of the division.

208 (b) Use of private information obtained from the department by a person or for a  
209 purpose other than one authorized in Subsection (4) or (5) violates Subsection 76-8-1301(4).

210 Section 6. Section 35A-5-501 is enacted to read:

211 **Part 5. Occupational Pay Data**

212 35A-5-501. Creation and maintenance of pay indices.

213 (1) (a) For each occupation in the Bureau of Labor Statistic's Standard Occupational  
214 Classification System, the department shall create and maintain an index of the current pay  
215 range for individuals employed in the occupation in the state.

216 (b) For each index described in Subsection (1)(a), the department shall include the  
217 percentile distribution of wages in the occupation.

218 (2) The department shall:

219 (a) update each index described in Subsection (1) no later than July 1 each year; and

220 (b) make each index described in Subsection (1) available to the public on the  
221 department's website.

222 (3) The department shall prepare and conduct an advertising campaign to promote the  
223 availability and utility of the indices described in Subsection (1).

224 Section 7. Section **63I-2-235** is amended to read:

225 **63I-2-235. Repeal dates -- Title 35A.**

226 (1) Subsection [35A-1-104.5](#)(4) is repealed December 1, 2018.

227 (2) Subsection [35A-4-312](#)(5)(q) is repealed December 1, 2018.

228 ~~[(1)]~~ (3) Subsection [35A-8-604](#)(6) is repealed October 1, 2020.

229 ~~[(2) Title 35A, Chapter 8, Part 11, Methamphetamine Housing Reconstruction and~~  
230 ~~Rehabilitation Account Act, is repealed July 1, 2015;]~~

231 ~~[(3) Section [35A-12-402](#) is repealed December 31, 2015;]~~