

2018 -- S 2475

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LC004054
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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 - FAIR EMPLOYMENT PRACTICES

Introduced By: Senators Goldin, Goodwin, Ruggerio, Lynch Prata, and McCaffrey

Date Introduced: February 15, 2018

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings and intent. It is the intent of the general assembly to
2 combat wage discrimination based on race or color, religion, sex, sexual orientation, gender
3 identity or expression, disability, age, or country of ancestral origin by strengthening and closing
4 gaps in existing wage discrimination laws.

5 SECTION 2. Sections 28-6-17, 28-6-18, 28-6-19, 28-6-20 and 28-6-21 of the General
6 Laws in Chapter 28-6 entitled "Wage Discrimination Based on Sex" are hereby amended to read
7 as follows:

8 **28-6-17. Definitions.**

9 As used in this chapter:

10 (a) "Age" means anyone who is at least forty (40) years of age.

11 ~~(a)~~(b) "Director" means the director of labor and training.

12 ~~(b)~~(c) "Employee" ~~as used in §§ 28-6-17—28-6-21~~ means any person ~~employed for hire~~
13 ~~by any employer in any lawful employment, but does not include persons engaged in domestic~~
14 ~~service in the home of the employer, or employees of any social club, fraternal, charitable,~~
15 ~~educational, religious, scientific, or literary association, no part of the net earnings of which~~
16 ~~inures to the benefit of any private individual~~ suffered or permitted to work by an employer,
17 except that independent contractors or subcontractors shall not be considered employees.

18 ~~(e)~~(d) "Employer" includes any person acting in the interest of an employer directly or
19 indirectly.

1 ~~(d)~~(e) "Employment" means any employment under contract of hire, expressed or
2 implied, written or oral, including all contracts entered into by helpers and assistants of
3 employees, whether paid by employer or employee, if employed with the knowledge, actual or
4 constructive, of the employer in which all or the greater part of the work is to be performed
5 within the state.

6 (f) "Wage" means all amounts at which the labor or service rendered is recompensed,
7 whether the amount is fixed or ascertained on a time, task, piece, commission basis, or other
8 method of calculating the amount, and includes benefits.

9 (g) "Wage history" means the wages paid to an applicant for employment by the
10 applicant's current employer and/or previous employer or employers.

11 ~~28-6-18. Wage differentials based on sex prohibited.~~ **Wage differentials based on**
12 **protected characteristics prohibited.**

13 (a) No employer shall ~~discriminate in the payment of wages as between the sexes or shall~~
14 ~~pay any female in his or her employ salary or wage rates less than the rates paid to male~~
15 ~~employees for equal work or work on the same operations~~ pay any of its employees at a wage rate
16 less than the rate paid to employees of another race or color, religion, sex, sexual orientation,
17 gender identity or expression, disability, age, or country of ancestral origin for comparable work,
18 when viewed as a composite of skill, effort, and responsibility, and performed under similar
19 working conditions, except where the employer meets the standards set forth in subsection (b) of
20 this section.

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

- 23 ~~(1) Seniority, experience, training, skill, or ability;~~
- 24 ~~(2) Duties and services performed, either regularly or occasionally;~~
- 25 ~~(3) The shift or time of day worked; or~~
- 26 ~~(4) Availability for other operations or any other reasonable differentiation except~~
27 ~~difference in sex.~~

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

31 (b) A wage differential is permitted when the employer demonstrates:
32 (1) The differential is based upon one or more of the following factors:
33 (i) A seniority system; provided, however, that time spent on leave due to a pregnancy-
34 related condition or parental, family and medical leave, shall not reduce seniority.

1 (ii) A merit system;

2 (iii) A system that measures earnings by quantity or quality of production, and the
3 employer demonstrates that the system is fair, and is not being used as a pretext for an unlawful
4 wage differential;

5 (iv) A bona fide factor other than race or color, religion, sex, sexual orientation, gender
6 identity or expression, disability, age, or country of ancestral origin such as education, training, or
7 experience. This factor shall apply only if the employer demonstrates that the factor:

8 (A) Is not based on or derived from a differential in compensation based on race or color,
9 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
10 ancestral origin;

11 (B) Is job-related to the position in question; and

12 (C) Is consistent with a business necessity. For purposes of this subsection, "business
13 necessity" means essential to effective job performance. This defense shall not apply if the
14 employee demonstrates that an alternative business practice exists that would serve the same
15 business purpose without producing the wage differential and that the employer has refused to
16 adopt such alternative practice.

17 (2) Each factor is relied upon reasonably.

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

19 (c) An individual's wage history cannot, by itself, justify an otherwise unlawful wage
20 differential.

21 (d) An employer who discriminates in violation of this section shall not, in order to
22 comply with the provisions of this section, reduce the wage rate of any employee.

23 (e) The agreement of an employee to work for less than the wage to which the employee
24 is entitled under this chapter is not a defense to an action under this chapter.

25 (f)(1) No employer shall prohibit an employee from inquiring about, discussing, or
26 disclosing the wages of such employee or another employee, or retaliate against an employee who
27 engages in such activities. No employer shall require an employee to enter into a waiver or other
28 agreement that purports to deny an employee the right to disclose or discuss their wages. An
29 employer shall not prohibit an employee from aiding or encouraging any other employee to
30 exercise their rights under this subsection.

31 (2) Nothing in this subsection shall require an employee to disclose their wages.

32 (3) Nothing in this section shall be construed to limit the rights of an employee provided
33 by any other provision of law or collective bargaining agreement.

34 (g)(1) No employer shall rely on the wage history of an applicant for employment in

1 considering them for employment, including, but not limited to, requiring that an applicant's prior
2 wages satisfy minimum or maximum criteria as a condition of being considered for employment;

3 (2) No employer shall rely on the wage history of an applicant for employment in
4 determining the wages such applicant is to be paid by the employer upon hire; provided that an
5 employer may rely on wage history, if it is voluntarily and without prompting provided by an
6 applicant for employment, after the employer makes an offer of employment with an offer of
7 wages to the applicant, to support a wage higher than the wage offered by the employer;

8 (3) No employer shall seek from an applicant for employment or their current or former
9 employer the wage history of the applicant; provided, however, that an employer may seek to
10 confirm an applicant's wage history only after an offer of employment with compensation has
11 been made to the applicant and the applicant has responded to the offer by providing wage history
12 to support a wage higher than that offered by the employer.

13 (h)(1) An employer shall provide an applicant for employment the wage range for the
14 position for which the applicant is applying upon the applicant's request or prior to inquiring
15 about the applicant's wage expectations or desired wages or providing the applicant an offer of
16 compensation, whichever comes first. An employer shall provide an employee the wage range for
17 the employee's job title and for comparable jobs upon hire and, thereafter, annually and upon
18 request.

19 (2) The department of labor and training shall promulgate regulations and guidance to
20 employers for determining the information to be provided pursuant to subsection (h)(1) of this
21 section, which shall include definitions for "wage range" and "comparable jobs."

22 (i) No employer shall discharge or in any other manner discriminate or retaliate against
23 any applicant for employment or employee because the applicant or employee has opposed a
24 practice made unlawful by this chapter or because the applicant or employee has made a charge
25 or filed any complaint to the employer, the director of labor and training, or any other person,
26 under or related to §§ 28-6-17 through 28-6-21, or instituted or caused to be instituted any
27 investigation, proceeding, hearing, or action under or related to §§ 28-6-17 through 28-6-21, or
28 has testified or is planning to testify, or has assisted, or participated in any manner in any such
29 investigation, proceeding, or hearing under §§ 28-6-17 through 28-6-21. No employer shall
30 coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on
31 account of their having exercised or enjoyed, or on account of their having aided or encouraged
32 any other individual in the exercise or enjoyment of, any right granted or protected by §§ 28-6-17
33 through 28-6-21.

34 (j) Except as provided in this section, any provision in any contract, agreement, or

1 understanding entered into after passage of this act establishing a variation in rates of pay based
2 on race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or
3 country of ancestral origin, shall be null and void.

4 (k) Posting of statutory provisions. Every employer subject to this chapter shall post in a
5 conspicuous place or places on its premises a notice to be prepared or approved by the director,
6 which shall set forth excerpts of this chapter and any other relevant information which the
7 director deems necessary to explain this chapter. Any employer who does not comply with the
8 provisions of this section shall be punished by a fine of not less than one hundred dollars (\$100)
9 nor more than five hundred dollars (\$500).

10 (l) Every employer shall keep a true and accurate record of hours worked and wages paid
11 each pay period to each employee in a form prescribed by the director. The employer shall keep
12 the records on file for at least three (3) years after the entry of the record.

13 **28-6-19. Enforcement of provisions.**

14 (a) The director of labor and training shall have the power and it shall be his or her duty
15 to carry out the provisions of §§ 28-6-17 -- 28-6-21.

16 (b) In carrying out these provisions, the director shall have the same powers and duties as
17 found under chapter 14 of title 28 to investigate, inspect, subpoena, and enforce through
18 administrative hearings complaints.

19 (c) The director shall be entitled to the same rights and remedies as found under chapter
20 14 of title 28 for an employer's effort to obstruct the director and authorized representatives in the
21 performance of their duties or for any person's failure to comply with any lawfully issued
22 subpoena, or subpoena duces tecum, or on the refusal of any witness to testify to any matter
23 regarding which they may be lawfully interrogated.

24 (d) An applicant for employment, employee, or former employee, for and on behalf of
25 themselves and other similarly situated individuals, or any organization representing such an
26 applicant, employee, or former employee, aggrieved by a violation of § 28-6-18 may file a
27 complaint with the director of labor and training.

28 (e) The department of labor and training and the commission for human rights shall
29 cooperate in the investigation of charges filed under this section when the allegations are within
30 the jurisdiction of both agencies.

31 (f) All claims under this chapter must be filed with the director within three (3) years
32 after the discriminatory practice declared unlawful by § 28-6-18. A discriminatory practice occurs
33 when a discriminatory compensation decision or other practice is adopted, when an individual
34 becomes subject to a discriminatory compensation decision or other practice, or when an

1 individual is affected by application of a discriminatory compensation decision or other practice,
2 including each time wages, benefits, or other compensation is paid, resulting in whole or in part
3 from such a decision or other practice.

4 (g) For a violation of § 28-6-18(a) through (e), an aggrieved party shall be entitled to
5 recover any unpaid wages and/or benefits; compensatory damages; liquidated damages in an
6 amount up to three (3) times the amount of unpaid wages and/or benefits owed, exclusive of
7 interest; and where the aggrieved party demonstrates that the employer acted with malice or
8 reckless indifference, punitive damages as may be appropriate; as well as an award of appropriate
9 equitable relief, including reinstatement of employment, fringe benefits and seniority rights, and
10 reasonable attorneys' fees, expert fees and other litigation costs.

11 (h) For a violation of § 28-6-18(f) through (j), an aggrieved party shall be entitled to
12 recover any compensatory damages; special damages not to exceed ten thousand dollars
13 (\$10,000) where the aggrieved party demonstrates that the employer acted with malice or reckless
14 indifference, punitive damages as may be appropriate; other equitable relief as may be
15 appropriate; and the costs of the action and reasonable attorneys' fees. If special damages are
16 available, an aggrieved party may only recover compensatory damages to the extent such
17 damages exceed the amount of special damages.

18 **28-6-20. Civil liability of employer for sex differential -- Actions. Civil liability of**
19 **employer for unlawful wage differential -- Actions.**

20 ~~An employer who violates the provisions of § 28-6-18 shall be liable to the employee or~~
21 ~~employees affected in the amount of their unpaid wages, and in an additional equal amount of~~
22 ~~liquidated damages. An action to recover the liability may be maintained in any court of~~
23 ~~competent jurisdiction by any one or more employees for and in behalf of himself or herself or~~
24 ~~themselves and other similarly situated employees. At the request of any employee paid less than~~
25 ~~the wage to which he or she is entitled under §§ 28-6-17—28-6-21, the director of labor and~~
26 ~~training may take an assignment of the wage claim in trust for the assigning employee and may~~
27 ~~bring any legal action necessary to collect the claim, and the liquidated damages provided for~~
28 ~~above. The director of labor and training shall not be required to pay the filing fee or other costs~~
29 ~~in connection with the action. The director of labor and training shall have the power to join~~
30 ~~various claimants against the employer in one cause of action.~~

31 (a) Any applicant for employment, employee, or former employee, for and on behalf of
32 themselves and other similarly situated individuals, or any organization representing such an
33 applicant, employee, or former employee, aggrieved by a violation of § 28-6-18 may file a civil
34 action in any court of competent jurisdiction to obtain relief. A civil action under this chapter

1 must be filed within three (3) years after the discriminatory practice declared unlawful by § 28-6-
2 18. A discriminatory practice occurs when a discriminatory compensation decision or other
3 practice is adopted, when an individual becomes subject to a discriminatory compensation
4 decision or other practice, or when an individual is affected by application of a discriminatory
5 compensation decision or other practice, including each time wages, benefits, or other
6 compensation is paid, resulting in whole or in part from such a decision or other practice.

7 (b) For a violation of § 28-6-18(a) through (e), an aggrieved party shall be entitled to
8 recover any unpaid wages and/or benefits; compensatory damages; liquidated damages in an
9 amount up to three (3) times the amount of unpaid wages and/or benefits owed exclusive of
10 interest; as well as an award of appropriate equitable relief, including reinstatement of
11 employment, fringe benefits and seniority rights, and reasonable attorneys' fees, expert fees and
12 other litigation costs; and where the aggrieved party demonstrates that the employer acted with
13 malice or reckless indifference, punitive damages as may be appropriate.

14 (c) For a violation of § 28-6-18(f) through (j), an aggrieved party shall be entitled to
15 recover any compensatory damages; special damages not to exceed ten thousand dollars
16 (\$10,000); other equitable relief as may be appropriate; the costs of the action and reasonable
17 attorneys' fees; and where the aggrieved party demonstrates that the employer acted with malice
18 or reckless indifference, punitive damages as may be appropriate. If special damages are
19 available, an aggrieved party may only recover compensatory damages to the extent such
20 damages exceed the amount of special damages.

21 (d) An aggrieved applicant for employment, employee, or former employee may not file
22 a civil action under this section if they had also filed a complaint with the director of labor and
23 training and the director has issued notice of an administrative hearing pursuant to § 28-6-19.

24 (e) The filing of a civil action under this section shall not preclude the director of labor
25 and training from investigating the matter and/or referring the matter to the attorney general.

26 **28-6-21. ~~Penalty for violations.~~ Civil Penalty for violations.**

27 ~~Any employer who violates any provision of §§ 28-6-17—28-6-21, or who discharges or~~
28 ~~in any other manner discriminates against any employee because the employee has made any~~
29 ~~complaint to his or her employer, the director of labor and training, or any other person, or~~
30 ~~instituted or caused to be instituted any proceeding under or related to §§ 28-6-17—28-6-21, or~~
31 ~~has testified or is about to testify in any proceeding, shall, upon conviction, be punished by a fine~~
32 ~~of not more than two hundred dollars (\$200) or by imprisonment for not more than six (6)~~
33 ~~months, or by both fine and imprisonment.~~

34 (a) Any employer who violates § 28-6-18(a) through (e), in addition to any other relief to

1 which any department or any aggrieved party may be entitled for such a violation, shall be liable
2 for a civil penalty in an amount up to three (3) times the amount of the total wages found to be
3 due, exclusive of interest, which shall be payable directly to the aggrieved party. The order may
4 further direct that an administrative penalty be paid to the department of labor and training in the
5 amount up to one time the amount of the total wages found to be due.

6 (b) Any employer who violates § 28-6-18(f) through (j) or (l), shall, in addition to any
7 other relief to which any department or any aggrieved party may be entitled for such a violation,
8 be liable for a fine of not more than:

9 (i) Two thousand five hundred dollars (\$2,500) for a first violation;

10 (ii) Three thousand dollars (\$3,000) for a second violation; and

11 (iii) Five thousand dollars (\$5,000) for a third or subsequent violation.

12 (c) In determining the amount of any penalty imposed under this section, the director or
13 the court shall consider the size of the employer's business, the good faith of the employer, the
14 gravity of the violation, the history of previous violations, and whether or not the violation was an
15 innocent mistake or willful.

16 (d) At the request of any party aggrieved by a violation of § 28-6-18, the director of labor
17 and training may take an assignment of the claim in trust for the assigning aggrieved party and
18 may bring any legal action necessary to collect the claim, and the damages provided for above.
19 The director of labor and training shall not be required to pay the filing fee or other costs in
20 connection with the action. The director of labor and training shall have the power to join various
21 claimants against the employer in one cause of action.

22 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS - FAIR EMPLOYMENT PRACTICES

1 This act would provide protections against employer imposed wage differentials based
2 upon the race or color, religion, sex, sexual orientation, gender identity or expression, disability,
3 age, or country of ancestral origin of the employee. The act would also provide that where wage
4 differentials do exist, employers must justify said differentials based on bona fide factors other
5 than race or color, religion, sex, sexual orientation, gender identity or expression, disability, age,
6 or country of ancestral origin. The act would further provide that an aggrieved party shall be
7 entitled to recover any unpaid wages and/or benefits, compensatory damages, and liquidated
8 damages in an amount up to three (3) times the amount of unpaid wages and/or benefits owed, an
9 award of appropriate equitable relief, including reinstatement of employment, fringe benefits and
10 seniority rights.

11 This act would take effect upon passage.

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