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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - UNLAWFUL EMPLOYMENT
PRACTICES

Introduced By: Representatives Perez, Vella-Wilkinson, Williams, Batista, C Lima, Diaz,
and Costantino

Date Introduced: February 11, 2022

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 named
14 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 description
9 of any action taken in resolution of the complaint; provided, however, no other personnel
10 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 programs,
5 for any employer or employment agency, labor organization, placement service, training school or
6 center, or any other employee referring source, prior to employment or admission to membership
7 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, sexual
15 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 relating
17 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 the
32 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 disqualification
5 from employment based on a person's conviction of one or more specified criminal offenses, an
6 employer may include a question or otherwise inquire whether the applicant has ever been
7 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.

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

1 **28-6-18. Wage differentials based on sex prohibited. [Effective until January 1, 2023.]**

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

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

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

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

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

11 (4) Availability for other operations or any other reasonable differentiation except
12 difference in sex; ~~or~~ or

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

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

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

19 **28-6-20.1. Defenses.**

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would prohibit an employer from inquiring about a prospective employee wage
2 and salary history before an offer of employment with compensation has been negotiated. It would
3 also prevent an employer from discriminating against an employee based on sex for seniority
4 reasons as long as time spent by the employee on leave due to a pregnancy-related condition or
5 protected family leave does not reduce that employee's seniority. Finally, it would create an
6 employer's affirmative defense, if it had, within the previous three (3) years and prior to the
7 commencement of an action, completed a pay practices self-evaluation and can demonstrate
8 reasonable progress in eliminating gender wage differentials.

9 This act would take effect upon passage.

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