

2018 -- H 7427 SUBSTITUTE A AS AMENDED

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LC004265/SUB A
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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: Representatives Donovan, Ruggiero, Ranglin-Vassell, Shekarchi, and
Blazejewski

Date Introduced: February 02, 2018

Referred To: House 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, and sex, by strengthening and closing gaps in
3 existing wage discrimination laws.

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

7 **28-6-17. Definitions.**

8 As used in this chapter:

9 (a) "Director" means the director of labor and training.

10 (b) "Employee" ~~as used in §§ 28-6-17—28-6-21~~ means any person ~~employed for hire by~~
11 ~~any employer in any lawful employment, but does not include persons engaged in domestic~~
12 ~~service in the home of the employer, or employees of any social club, fraternal, charitable,~~
13 ~~educational, religious, scientific, or literary association, no part of the net earnings of which~~
14 ~~inures to the benefit of any private individual~~ in the state of Rhode Island suffered or permitted to
15 work by an employer, except for independent contractors, subcontractors, temporary employees,
16 seasonal employees and those not considered employees as defined in § 28-12-2.

17 (c) "Employer" includes any person acting in the interest of an employer, directly or
18 indirectly, who employs eighteen (18) or more employees and who sets the wage for the
19 employee.

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

5 (e) "Equal work" means jobs that require equal skill, effort, and responsibility and are
6 performed under similar working conditions.

7 (f) "Wage" means all amounts at which the labor or service rendered is recompensed,
8 whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other
9 method of calculating the amount, and includes benefits, but shall not include gratuities as
10 defined in § 28-12-5 or overtime pay as defined in § 28-12-4.1.

11 (g) "Wage history" means the wages paid to an applicant for employment by the
12 applicant's current employer and/or previous employer or employers. "Wage history" does not
13 include any objective measure of the applicant's productivity such as revenue, sales, or other
14 production reports.

15 **28-6-18. Wage differentials based on sex prohibited. Wage differentials based on**
16 **protected characteristics prohibited.**

17 (a) No employer shall ~~discriminate in the payment of wages as between the sexes or shall~~
18 ~~pay any female in his or her employ salary or wage rates less than the rates paid to male~~
19 ~~employees for equal work or work on the same operations~~ pay any of its employees at a wage rate
20 less than the rate paid to employees of another race, color, or gender for equal work, except where
21 the employer meets the standards set forth in subsection (b) of this section.

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

24 ~~(1) Seniority, experience, training, skill, or ability;~~

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

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

27 ~~(4) Availability for other operations or any other reasonable differentiation except~~
28 ~~difference in sex.~~

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

32 (b) A wage differential is permitted when the employer demonstrates:

33 (1) The differential is based upon one or more of the following factors:

34 (i) A seniority system; provided, however, that time spent on leave due to a pregnancy-

1 related condition or parental, family and medical leave, shall not reduce seniority.

2 (ii) A merit system;

3 (iii) A system that measures earnings by quantity or quality of production;

4 (iv) Education, training or experience to the extent such factors are reasonably related to
5 the particular job in question;

6 (v) Geographical location of the job;

7 (vi) A factor other than race, color or gender, including, but not limited to, work-related
8 travel, if the travel is a regular and necessary condition of the particular job; or reasonable shift
9 differentials.

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

12 (d)(1) No employer shall prohibit an employee from inquiring about, discussing, or
13 disclosing the wages of such employee to another employee, or retaliate against an employee who
14 engages in such activities. No employer shall require an employee to enter into a waiver or other
15 agreement that purports to deny an employee the right to disclose or discuss their wages. An
16 employer shall not prohibit an employee from aiding or encouraging any other employee to
17 exercise their rights under this subsection. However, employees who have access to the
18 compensation information of other employees or applicants as a part of their essential job
19 functions cannot disclose the pay of other employees or applicants to individuals who do not
20 otherwise have access to compensation information, unless the disclosure is:

21 (i) In response to a formal complaint or charge;

22 (ii) In furtherance of an investigation, proceeding, hearing, or action, including an
23 investigation conducted by the employer; or

24 (iii) Consistent with the employer's legal duty to furnish information.

25 (2) Nothing in this section shall require an employee to disclose their wages.

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

28 (e) No employer shall:

29 (1) Rely on the wage history of an applicant for employment in considering them for
30 employment, including, but not limited to, requiring that an applicant's prior wages satisfy
31 minimum or maximum criteria as a condition of being considered for employment;

32 (2) Rely on the wage history of an applicant for employment in determining the wages
33 such applicant is to be paid by the employer upon hire; provided that an employer may rely on
34 wage history, if it is voluntarily, and without prompting, provided by an applicant for

1 employment, after the employer makes an offer of employment with an offer of wages to the
2 applicant, to support a wage higher than the wage offered by the employer;

3 (3) Seek from an applicant for employment or their current or former employer the wage
4 history of the applicant; provided, however, that an employer may inquire about an applicant's
5 past performance as well as whether the applicant will have to forfeit deferred compensation or
6 unvested equity from their current employer and the value and structure of the deferred
7 compensation or unvested equity, request documentation to verify the applicant's representation,
8 and consider such information in making the applicant an offer. An employer may seek to
9 confirm an applicant's wage history only after an offer of employment with compensation has
10 been made to the applicant and the applicant has responded to the offer by providing wage history
11 to support a wage higher than that offered by the employer.

12 (i) This subdivision shall not apply to:

13 (A) Any actions taken by an employer, employment agency, or employee or agent thereof
14 pursuant to any federal, state or local law that specifically authorizes the disclosure or verification
15 of salary history for employment purposes, or specifically requires knowledge of salary history to
16 determine an employee's compensation;

17 (B) Applicants for internal transfer or promotion with their current employer;

18 (C) Any attempt by an employer, employment agency, or employee or agent thereof, to
19 verify an applicant's disclosure of non-salary related information or conduct a background check,
20 provided that if such verification or background check discloses the applicant's salary history,
21 such disclosure shall not be relied upon for purposes of determining the salary, benefits or other
22 compensation of such applicant during the hiring process, including the negotiation of a contract;
23 or

24 (D) Public employee positions for which salary, benefits or other compensation are
25 determined pursuant to procedures established by collective bargaining.

26 (f) Except as provided in this section, any provision in any contract, agreement, or
27 understanding entered into after the effective date of this act establishing a variation in rates of
28 pay based on race, color, or gender shall be null and void.

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

1 **28-6-19. Enforcement of provisions.**

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

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

7 (c) The director shall be entitled to the same rights and remedies as found under chapter
8 14 of title 28 for an employer's effort to obstruct the director and authorized representatives in the
9 performance of their duties or for any person's failure to comply with any lawfully issued
10 subpoena, or subpoena duces tecum, or on the refusal of any witness to testify to any matter
11 regarding which they may be lawfully interrogated.

12 (d) An applicant for employment, employee, or former employee, for and on behalf of
13 themselves and other similarly situated individuals, aggrieved by a violation of § 28-6-18 may
14 file a complaint with the director of labor and training.

15 (e) The department of labor and training and the commission for human rights shall
16 cooperate in the investigation of charges filed under this chapter when the allegations are within
17 the jurisdiction of both agencies.

18 (f) All claims under this chapter must be filed with the director within three (3) years
19 after the discriminatory practice declared unlawful by § 28-6-18. A discriminatory practice occurs
20 when a discriminatory compensation decision or other practice is adopted, when an individual
21 becomes subject to a discriminatory compensation decision or other practice, or when an
22 individual is affected by application of a discriminatory compensation decision or other practice,
23 including each time wages, benefits, or other compensation is paid, resulting in whole or in part
24 from such a decision or other practice.

25 (g) For a violation of § 28-6-18(a) through 18(c), an aggrieved party shall be entitled to
26 recover any unpaid wages and/or benefits; compensatory damages; as well as an award of
27 appropriate equitable relief, including reinstatement of employment, fringe benefits and seniority
28 rights, and reasonable attorneys' fees, expert fees and other litigation costs.

29 (h) An employer against whom an action is brought alleging a violation of § 28-6-18(a)
30 through 18(f) and who, within the previous five (5) years and prior to the commencement of the
31 action, has both completed a self-evaluation of its pay practices in good faith and can demonstrate
32 that reasonable progress has been made towards eliminating compensation differentials based on
33 race, color or gender for equal work in accordance with that evaluation, shall have an affirmative
34 defense to liability under § 28-6-18(a) through 18(f). For purposes of this subsection, an

1 employer's self-evaluation may be of the employer's own design, so long as it is reasonable in
2 detail and scope in light of the size of the employer or may be consistent with standard templates
3 or forms issued by the department of labor and training.

4 (1) In determining if a self-evaluation is reasonable in detail and scope, the factors the
5 court may consider include, but are not limited to, whether the evaluation includes a reasonable
6 number of jobs and employees; whether the evaluation takes into account all reasonably relevant
7 and available information; and whether the evaluation is reasonably sophisticated in its analysis
8 of potentially equal work, employee compensation, and the application of the permissible reasons
9 for compensation differentials set forth in § 28-6-18(b).

10 (2) In determining whether an employer has made reasonable progress toward
11 eliminating compensation differentials, the factors the court may consider include, but are not
12 limited to, how much time has passed, the nature and degree of its progress as compared to the
13 scope of the compensation differentials identified, and the size and resources of the employer.

14 (3) Evidence of a self-evaluation or remedial steps undertaken in accordance with this
15 subsection shall not be admissible in any proceeding as evidence of violation of § 28-6-18(a)
16 through 18(f) that occurred prior to the date of the self-evaluation was completed or that occurred
17 either:

18 (i) Within one year thereafter; or

19 (ii) Within two (2) years thereafter if the employer can demonstrate that it has developed
20 and begun implementing in good faith a plan to address any wage differentials based on race,
21 color or gender for equal work.

22 (2) An employer who has not completed a self-evaluation shall not be subject to any
23 negative or adverse inferences as a result of having not completed a self-evaluation.

24 (i) For a violation of § 28-6-18(d) through 18(f), an aggrieved party shall be entitled to
25 recover any compensatory damages and reasonable attorneys' fees.

26 (j) The department of labor and training is hereby directed to adopt rules and regulations
27 consistent with this chapter, as soon as possible, but no later than January 15, 2019. Any and all
28 rules and regulations that are adopted and developed by the department of labor and training
29 and/or any other state agency regarding this chapter, shall be subject to the approval of the
30 general assembly prior to becoming effective.

31 **28-6-21. ~~Penalty for violations.~~ Civil penalty for violations.**

32 ~~Any employer who violates any provision of §§ 28-6-17—28-6-21, or who discharges or~~
33 ~~in any other manner discriminates against any employee because the employee has made any~~
34 ~~complaint to his or her employer, the director of labor and training, or any other person, or~~

1 ~~instituted or caused to be instituted any proceeding under or related to §§ 28-6-17—28-6-21, or~~
2 ~~has testified or is about to testify in any proceeding, shall, upon conviction, be punished by a fine~~
3 ~~of not more than two hundred dollars (\$200) or by imprisonment for not more than six (6)~~
4 ~~months, or by both fine and imprisonment.~~

5 (a) Any employer who violates § 28-6-18(f) shall, in addition to any other relief to which
6 any department or any aggrieved party may be entitled for such a violation, be liable for a fine of
7 not more than two hundred dollars (\$200) per violation.

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

12 SECTION 3. Section 28-6-20 of the General Laws in Chapter 28-6 entitled "Wage
13 Discrimination Based on Sex" is hereby repealed.

14 ~~**28-6-20. Civil liability of employer for sex differential -- Actions.**~~

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

26 SECTION 4. Chapter 28-6 of the General Laws entitled "Wage Discrimination Based on
27 Sex" is hereby amended by adding thereto the following section:

28 **28-6-22. Uniformity.**

29 No municipality shall establish, mandate, or otherwise require an employer to comply
30 with wage differential standards different from those required under chapter 6 of title 28.

31 SECTION 5. This act shall take effect on July 1, 2020.

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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, sex of the employee. The act would also provide that where wage
3 differentials do exist, employers must justify said differentials based on factors other than race,
4 color or sex.

5 This act would take effect on July 1, 2020.

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