AN ACT

Amending the act of December 17, 1959 (P.L.1913, No.694),
entitled "An act prohibiting discrimination in rate of pay
because of sex; conferring powers and imposing duties on the
Department of Labor and Industry; and prescribing penalties;"

further providing for definitions and for wage rates,
providing for additional violations and for reports and
further providing for collection of unpaid wages and for
penalties.

The General Assembly of the Commonwealth of Pennsylvania

hereby enacts as follows:

Section 1. Section 2 of the act of December 17, 1959
(P.L.1913, No.694), known as the Equal Pay Law, is amended by
adding definitions to read:

Section 2. Definitions.--* * *

(a.1) "Comparable work" shall mean work that is
substantially similar, including substantially similar skill
levels, effort and responsibility. The term includes work that
is performed under similar working conditions.

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(e.1) "Working conditions" shall include the circumstances
considered when setting salary or wages, including reasonable
shift differentials, physical surroundings and hazards
encountered by employees performing a job.

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Section 2. Section 3(a) of the act, amended July 31, 1968
(P.L.869, No.262), is amended to read:

Section 3. Wage Rates.--(a) No employer having employees
subject to any provisions of this section shall discriminate,
within any establishment in which such employees are employed,
between employees on the basis of sex by paying wages to employees
in such establishment at a rate less than the rate at which he
pays wages to employees of the opposite sex in such establishment
for equal work on [jobs, the performance of which, requires
equal skill, effort, and responsibility, and which are]
comparable work performed under similar working conditions,
except where such payment is made pursuant to (1) a seniority
system, so long as time spent on leave due to a pregnancy-
related condition or protected parental, family or medical leave
may not reduce seniority; (2) a merit system; (3) a system which
measures earnings by quantity or quality of production; [or] (4)
a differential based on any other factor other than [sex:] sex;
(5) the geographic location where a job is performed; (6)
education, training or experience to the extent the factors are
reasonably related to the job and consistent with business
necessity; or (7) travel if the travel is a regular and
necessary condition of the job: Provided, That any employer who
is paying a wage rate differential in violation of this
subsection shall not in order to comply with the provisions of
this subsection, reduce the wage rate of any employee. The job
title or job description alone shall not determine if two jobs
are comparable.
* * *  

Section 3. The act is amended by adding sections to read:

Section 3.1. Additional Violations.--(a) An employer shall not do any of the following:

(1) Require an employer refrain from inquiring about, discussing or disclosing information about the employee's own wages, including benefits or other compensation, or about any other employees' wages.

(2) Screen job applicants based on wages, benefits, other compensation or salary histories, including requiring disclosure of benefits or salary history or requiring the information as a condition of being interviewed or a condition of an offer of employment.

(3) Prior to an employer offering employment and compensation to an employee and receiving written authorization by the employee, an employer shall not seek salary, benefit, or prior wages with any former or current employer.

(4) Retaliate or discharge an employee for any of the following:

(i) Opposition to any violation of this act.

(ii) Complaining, institute a proceeding or attempting or planning to complain or institute a proceeding based on a violation of this act.

(iii) Testifying or planning to testify against an employer in an action under this act.

(iv) Assisting an investigation or otherwise participating in an action under this act.

(v) Disclosing, inquiring about or discussing wages, benefits or other compensation of the employee or another employee.
(5) Contract with an employe to avoid complying with this act. An employer may prohibit the disclosure of an employe's compensation information without the written authorization of the employe unless the information is a public record under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

Section 3.2. Reports.--(a) There is created a special commission to investigate, analyze and study the factors, causes and impact of pay disparity based on gender. The commission shall consist of the following fifteen (15) members:

(1) The Secretary of Labor and Industry or the secretary's designee, who shall serve as chairperson for the commission.

(2) The Attorney General, or the Attorney General's designee.

(3) Two members appointed by the President pro tempore of the Senate.

(4) One member appointed by the Minority Leader of the Senate.

(5) Two members appointed by the Speaker of the House of Representatives.

(6) One member appointed by the Minority Leader of the House of Representatives.

(7) Seven members appointed by the Governor as follows:

(i) One member shall represent employers.

(ii) Two members shall have experience in the field of gender economics.

(iii) One member shall represent the Women's Law Project of Pennsylvania.

(iv) One member shall represent the Pennsylvania Commission for Women.
(v) One member shall represent the Pennsylvania chapter of the National Organization of Women.

(vi) One member shall represent organized labor.

(b) The commission shall submit a report of the commission's findings to the General Assembly no later than January 1, 2019, and annually on January 1 until January 1, 2024. The final report may include proposed legislation to further reduce gender based pay disparities.

Section 4. Section 5 of the act, amended July 31, 1968 (P.L.869, No.262), is amended to read:

Section 5. Collection of Unpaid Wages.--(a) An employer who wilfully and knowingly violates the provisions of section 3 or 3.1 of this act shall be liable to the employe or employes affected in the amount of their unpaid wages and in addition, an equal amount as liquidated damages. Action to recover such wages and damages may be maintained in any court of competent jurisdiction by any one or more employes for and in behalf of himself or themselves and other employes similarly situated. Any agreement between the employer and an employe to work for less than the wage to which such employe is entitled under this act shall be no defense to such action. The court in such action shall, in addition to any wages and damages, allow a reasonable attorney's fee and costs of the action to the plaintiff. At the request of any employe paid less than the wage to which he is entitled under this act, the Secretary of Labor and Industry may take an assignment of such wage claim for collection and shall bring any legal action necessary to collect such claim. The secretary shall not be required to pay the filing fee or other costs in connection with such action. The secretary shall have power to join various claimants against the employer in one
cause of action.

(b) Any action pursuant to the provisions of this act must be brought within two years from the date upon which the violation complained of occurs. An action under this act must be commenced within three years of the date of the alleged violation. A violation shall be deemed to have occurred when any of the following occurs:

(1) A discriminatory compensation decision or other practice is adopted.

(2) An employe becomes subject to a discriminatory compensation decision or other practice.

(3) An employe is affected by an application of a discriminatory compensation decision or practice, including each time wages, benefits or other compensations are paid, resulting in whole or in part from a decision or practice.

(c) It shall be an affirmative defense if an employer has completed self-evaluation of pay practices in good faith and can demonstrate that reasonable progress has been made in eliminating gender-based compensation differentials. The self-evaluation may be designed by the employer if the evaluation is reasonable in details and scope.

(d) Self-evaluations or remedial steps taken by the employer shall not be admissible in any proceeding as evidence of a violation of this act. An employer that did not complete a self-evaluation shall not have the lack of completion used against the employer.

Section 5. Section 8(a) of the act is amended and the section is amended by adding a subsection to read:

Section 8. Penalties.—(a) Any employer who wilfully and knowingly violates any provisions of this act, or who discharges
or in any other manner discriminates against any employe because such employe has made any complaint to his employer, the secretary or any other person who instituted or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceedings, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not [less than fifty dollars ($50) nor] more than [two hundred dollars ($200)] one thousand dollars ($1,000), and, upon default in such fine and costs, shall undergo imprisonment for not less than thirty days nor more than sixty days. Each day such a violation continues shall constitute a separate offense.

* * *

(c) Each employer required to comply with the requirements of this act must post a notice in the workplace notifying employes of their rights under this act. The notice must be placed in a conspicuous place in at least one location where employes congregate.

Section 6. This act shall take effect in 60 days.