

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 959 Session of
1999

INTRODUCED BY KITCHEN, HUGHES, COSTA, BELAN, TARTAGLIONE,
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MAY 10, 1999

REFERRED TO LABOR AND INDUSTRY, MAY 10, 1999

AN ACT

1 Prohibiting discrimination in payment of wages because of sex,
2 race or national origin; providing for remedies; conferring
3 powers and imposing duties on the Department of Labor and
4 Industry; and making a repeal.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Fair Pay Act.

9 Section 2. Declaration of policy.

10 The General Assembly finds and declares as follows:

11 (1) Despite Federal and State laws banning
12 discrimination in employment and pay, in both the private and
13 public sector, wage differentials persist between women and
14 men and between minorities and nonminorities in the same jobs
15 and in jobs that are dissimilar but that require equivalent
16 composites of skill, effort, responsibility and working
17 conditions.

18 (2) The existence of wage differentials:

1 (i) depresses wages and living standards for
2 employees necessary for their health and efficiency;

3 (ii) reduces family incomes and contributes to the
4 higher poverty rates among female-headed and minority
5 households;

6 (iii) prevents the maximum utilization of the
7 available labor resources;

8 (iv) tends to cause labor disputes, thereby
9 burdening, affecting and obstructing commerce;

10 (v) constitutes an unfair method of competition; and

11 (vi) violates the public policy of the Commonwealth
12 against discrimination.

13 (3) Discrimination in wage-setting practices has played
14 a role in depressing wages for women and minorities
15 generally.

16 (4) Many individuals work in occupations that are
17 dominated by individuals of their same sex, race or national
18 origin, and discrimination in hiring, job assignment and
19 promotion has played a role in establishing and maintaining
20 segregated work forces.

21 (5) Eliminating discrimination in compensation based on
22 sex, race or national origin would have positive effects,
23 including:

24 (i) providing a solution to problems in the economy
25 created by discriminatory wage differentials.

26 (ii) reducing the number of working women and people
27 of color earning low wages, thereby lowering their
28 incidence of poverty during normal working years and in
29 retirement; and

30 (iii) promoting stable families by raising family

1 incomes.

2 (6) It is the purpose of this act to correct and as
3 rapidly as practicable to eliminate discriminatory wage
4 practices based on sex, race or national origin.

5 Section 3. Definitions.

6 The following words and phrases when used in this act shall
7 have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Department." The Department of Labor and Industry of the
10 Commonwealth.

11 "Employ." To suffer or permit to work.

12 "Employee." Any person employed by an employer. The term
13 includes all of an employer's permanent employees, whether
14 working full time or part time and any temporary employee
15 employed by an employer for a period of at least three months.
16 The term shall not include any individual employed by his
17 parents, spouse or child.

18 "Employer." Any person who employs three or more persons.
19 The term includes the Commonwealth and all political
20 subdivisions thereof.

21 "Equivalent jobs." Jobs or occupations that are equal within
22 the meaning of section 6 of the Fair Labor Standards Act of 1938
23 (52 Stat. 1060, 29 U.S.C. § 206(d)), or jobs or occupations that
24 are dissimilar but whose requirements are equivalent, when
25 viewed as a composite of skills, effort, responsibility and
26 working conditions.

27 "Labor organization." Any organization that exists for the
28 purpose, in whole or in part, of collective bargaining or of
29 dealing with employers concerning grievances, terms or
30 conditions of employment, or of other mutual aid or protection

1 in connection with employment.

2 "Market rates." The rates that employers within a prescribed
3 geographic area actually pay or are reported to pay for specific
4 jobs, as determined by formal or informal surveys, wage studies
5 or other means.

6 "Person." One or more individuals, partnerships,
7 associations, corporations, limited liability companies, legal
8 representatives, trustees, trustees in bankruptcy, receivers and
9 the Commonwealth and all political subdivisions and agencies
10 thereof.

11 "Wages" or "wage rates." Includes all compensation in any
12 form that an employer provides to employees in payment for work
13 done or services rendered including, but not limited to, base
14 pay, bonuses, commissions, awards, tips or various forms of
15 nonmonetary compensation if provided in lieu of or in addition
16 to monetary compensation and that have economic value to an
17 employee.

18 Section 4. Prohibition against discrimination in wages.

19 (a) Unlawful employment practices.--It shall be an unlawful
20 employment practice in violation of this act for an employer to
21 discriminate between employees on the basis of sex, race or
22 national origin by:

23 (1) Paying wages to employees at a rate less than the
24 rate paid to employees of the opposite sex or of a different
25 race or national origin for work in equivalent jobs.

26 (2) Paying wages to employees in a job that is dominated
27 by employees of a particular sex, race or national origin at
28 a rate less than the rate at which the employer pays to
29 employees in another job that is dominated by employees of
30 the opposite sex or of a different race or national origin

1 for work on equivalent jobs.

2 (b) Permissible wage differentials.--Notwithstanding
3 subsection (a), it shall not be an unlawful employment practice
4 for an employer to pay different wage rates to employees if
5 those payments are made pursuant to:

6 (1) A bona fide seniority or merit system.

7 (2) A system that measures earnings by quality or
8 quality of production.

9 (3) Any bona fide factor other than sex, race or
10 national origin. However, wage differentials based on varying
11 market rates for equivalent jobs for the differing economic
12 benefits to the employer of equivalent jobs shall not be
13 considered differentials based on bona fide factors other
14 than sex, race or national origin.

15 (c) Wage reduction.--An employer who is paying wages in
16 violation of this section shall not reduce the wage of any
17 employee in order to comply with this section.

18 (d) Labor organization action.--No labor organization or its
19 agents representing employees of an employer having employees
20 subject to this act shall cause or attempt to cause an employer
21 to discriminate against an employee in violation of subsection
22 (a).

23 (e) Department regulations.--The department shall promulgate
24 regulations specifying the criteria for determining whether a
25 job is dominated by employees of a particular sex, race or
26 national origin. Criteria shall include, but not be limited to,
27 factors such as:

28 (1) Whether the job has ever been formally classified as
29 or traditionally considered to be a "male" or "female" or
30 "white" or "minority" job.

1 (2) Whether there is a history of discrimination against
2 women or people of color with regard to wages, assignment or
3 access to jobs, or other terms and conditions of employment.

4 (3) The demographic composition of the work force in
5 equivalent jobs, for example, numbers or percentages of
6 women, men, white persons and people of color.

7 The regulations shall not include a list of jobs.

8 Section 5. Other prohibited acts.

9 It shall be an unlawful employment practice in violation of
10 this act for an employer:

11 (1) To take adverse actions or otherwise discriminate
12 against any individual because the individual has opposed any
13 act or practice made unlawful by this act, has sought to
14 enforce rights protected under this act or has testified,
15 assisted or participated in any manner in an investigation,
16 hearing or other proceeding to enforce this act.

17 (2) To discharge or in any other manner discriminate
18 against, coerce, intimidate, threaten or interfere with any
19 employee or any other person because the employee inquired
20 about, disclosed, compared or otherwise discussed the
21 employee's wages or the wages of any other employee or
22 because the employee exercised, enjoyed, aided or encouraged
23 any other person to exercise or enjoy any right granted or
24 protected by this act.

25 Section 6. Wage disclosure, recordkeeping and reporting
26 requirements.

27 (a) Wage disclosure statement.--Upon commencement of an
28 individual's employment and at least annually thereafter, every
29 employer subject to this act shall provide to each employee a
30 written statement sufficient to inform the employee of the

1 employee's job title, wage rate and how the wage is calculated.
2 This notice shall be supplemented whenever an employee is
3 promoted or reassigned to a different position with the
4 employer. However, the employer is not required to issue
5 supplemental notifications for temporary assignments that are no
6 greater than three months in duration.

7 (b) Employer records and reports.--An employer subject to
8 this act shall make and preserve records that document the wages
9 paid to employees and that document and support the method,
10 system, calculations and other bases used to establish, adjust
11 and determine the wage rates paid to the employer's employees.
12 An employer subject to this act shall preserve these records for
13 a period of time, and shall make reports from the records, as
14 prescribed by regulation or order of the department.

15 (c) Confidentiality requirements.--The regulations
16 promulgated under this act relating to the form of reports
17 required by subsection (b) shall provide for protection of the
18 confidentiality of employees and shall expressly require that
19 reports shall not include the names or other identifying
20 information from which readers could discern the identities of
21 employees. The regulations may also identify circumstances that
22 warrant a prohibition on disclosure of reports or information
23 identifying the employer.

24 (d) Department use of data collected.--The department may
25 use the information and data it collects under subsection (b)
26 for statistical and research purposes and may compile and
27 publish studies, analyses, reports and surveys based on the
28 information and data as it may consider appropriate.

29 Section 7. Remedies and enforcement.

30 (a) Remedies.--

1 (1) In any action in which a court or jury finds that an
2 employer has engaged in an act that violates section 4, 5 or
3 6, the court or jury shall award to any affected employee or
4 employees monetary relief, including back pay in an amount
5 equal to the difference between the employees' actual
6 earnings and what the employee would have earned but for the
7 employer's unlawful practice, and an additional amount in
8 compensatory and punitive damages, as appropriate.

9 (2) In any action in which a court or jury finds that an
10 employer has engaged in an act that violates section 4, 5 or
11 6, the court shall enjoin the employer from continuing to
12 discriminate against affected employees and shall direct the
13 employer to comply with this act. The court may order the
14 employer to take additional affirmative steps as are
15 necessary, including reinstatement or reclassification of
16 affected workers, to ensure an end to unlawful
17 discrimination.

18 (3) In any action in which an affected employee or
19 employees prevail in a claim against an employer, the court
20 shall, in addition to any judgment awarded to the plaintiff,
21 allow reasonable attorney fees, reasonable expert witness
22 fees and other costs of the action to be paid by the
23 employer.

24 (b) Enforcement.--

25 (1) An action to recover the damages or equitable relief
26 prescribed in subsection (a) may be maintained against an
27 employer in a court of competent jurisdiction by any one or
28 more employees or their representatives for or on behalf of:

29 (i) The employees.

30 (ii) The employees and other employees similarly

1 situated.

2 (2) The department shall receive, investigate and attempt
3 to resolve a complaint or a violation of section 4, 5 or 6.
4 In the event the department is unable to reach a voluntary
5 resolution of a complaint filed under this paragraph, the
6 department may bring an action in a court of competent
7 jurisdiction to recover the equitable and monetary relief
8 described in subsection (a). Any sums recovered by the
9 department under this paragraph shall be paid directly to
10 each employee affected by the employer's unlawful act.

11 (c) Limitation.--An action may be brought under this section
12 not later than two years after the date of the last event
13 constituting the alleged violation for which the action is
14 brought.

15 Section 8. Regulations.

16 The department shall prescribe regulations as are necessary
17 to carry out this act not later than 120 days after the date of
18 the enactment of this act.

19 Section 9. Severability.

20 The provisions of this act are severable. If any provision of
21 this act or its application to any person or circumstance is
22 held invalid, the invalidity shall not affect other provisions
23 or applications of this act which can be given effect without
24 the invalid provision or application.

25 Section 10. Repeals.

26 The act of December 17, 1959 (P.L.1913, No.694), known as the
27 Equal Pay Law, is repealed.

28 Section 11. Effective date.

29 This act shall take effect immediately.