

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1160 Session of 2015

INTRODUCED BY SIMS, DAVIS, V. BROWN, SCHREIBER, FRANKEL, RAVENSTAHL, SNYDER, COHEN, DERMODY, McCARTER, SCHLOSSBERG, D. MILLER, GAINNEY, KIM, FARINA, KINSEY, SCHWEYER, M. DALEY, THOMAS, HARKINS, BROWNLEE, C. PARKER, HARHAI, MAHONEY, YOUNGBLOOD, D. COSTA, GOODMAN, CALTAGIRONE, O'BRIEN, BOYLE, MATZIE, McNEILL, ACOSTA, DEAN, BIZZARRO, ROEBUCK, DONATUCCI, STURLA, FABRIZIO, KAVULICH, CARROLL, DRISCOLL, DAVIDSON, SABATINA, D. PARKER, J. HARRIS AND SANTARSIERO, MAY 14, 2015

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MAY 14, 2015

AN ACT

1 Amending the act of December 17, 1959 (P.L.1913, No.694),
 2 entitled "An act prohibiting discrimination in rate of pay
 3 because of sex; conferring powers and imposing duties on the
 4 Department of Labor and Industry; and prescribing penalties,"
 5 further providing for definitions, for wage rates and for
 6 collection of unpaid wages.

7 The General Assembly of the Commonwealth of Pennsylvania
 8 hereby enacts as follows:

9 Section 1. Section 2(a) of the act of December 17, 1959
 10 (P.L.1913, No.694), known as the Equal Pay Law, amended July 31,
 11 1968 (P.L.869, No.262), is amended and the section is amended by
 12 adding a subsection to read:

13 Section 2. Definitions.--(a) The term "employee," as used in
 14 this act, shall mean any person employed for hire in any lawful
 15 business, industry, trade or profession, or in any other lawful
 16 enterprise in which individuals are gainfully employed;
 17 including individuals employed by the Commonwealth or any of its

1 political subdivisions, including public bodies[: Provided,
2 however, That the term "employee" as used in this act shall not
3 apply to any person or persons who is or are subject to section
4 6 of the Federal Fair Labor Standards Act (Act of June 25, 1938,
5 as amended)].

6 * * *

7 (e.1) The term "wages" includes all earnings of an employe,
8 regardless of whether determined on time, task, piece,
9 commission or other method of calculation. The term "wages" also
10 includes fringe benefits or wage supplements whether payable by
11 the employer from funds of the employer or from amounts withheld
12 from the employe's pay by the employer.

13 * * *

14 Section 2. Sections 3 and 5 of the act, amended July 31,
15 1968 (P.L.869, No.262), are amended to read:

16 Section 3. Wage Rates.--(a) No employer having employes
17 subject to any provisions of this section shall discriminate[,
18 within any establishment in which such employes are employed,]
19 between employes on the basis of sex by paying wages to employes
20 [in such establishment] at a rate less than the rate at which he
21 pays wages to employes of the opposite sex [in such
22 establishment] for equal work on jobs, the performance of which,
23 requires equal skill, effort, and responsibility, and which are
24 performed under similar working conditions, except where such
25 payment is made pursuant to (1) a seniority system; (2) a merit
26 system; (3) a system which measures earnings by quantity or
27 quality of production; or (4) a differential based on [any other
28 factor] bona fide factors other than sex, such as education,
29 training or experience: Provided, That any employer who is
30 paying a wage rate differential in violation of this subsection

1 shall not in order to comply with the provisions of this
2 subsection, reduce the wage rate of any employe.

3 (a.1) Subsection (a)(4) shall apply only if the employer
4 demonstrates that the bona fide factor: (1) is not based upon or
5 derived from a sex-based differential in compensation; (2) is
6 job-related with respect to the position in question; and (3) is
7 consistent with business necessity. The defense shall not apply
8 where the employe demonstrates that an alternative employment
9 practice exists that would serve the same business purpose
10 without producing the differential and that the employer has
11 refused to adopt the alternative practice.

12 (b) No labor organization, or its agents, representing
13 employes of an employer having employes subject to any
14 provisions of this section, shall cause or attempt to cause such
15 an employer to discriminate against an employe in violation of
16 subsection (a) of this section.

17 (c) No employer or labor organization may discharge or in
18 any other manner discriminate or retaliate against an employe
19 who: (1) has made a report, verbally or in writing, alleging a
20 violation of this act; (2) has made a charge, filed a complaint
21 or instituted or caused to be instituted any investigation,
22 proceeding, hearing or action under or related to this act; (3)
23 has participated in any manner in an investigation conducted by
24 the employer, a proceeding, hearing or action under or related
25 to this act or has testified or is planning to testify or has
26 assisted or participated in any manner in any such
27 investigation, proceeding, hearing or action; (4) has served or
28 is planning to serve on an industry committee; or (5) has
29 inquired about, discussed or disclosed the wages of the employe
30 or another employe. Taking adverse action against a person

1 within ninety days of the person's exercise of rights protected
2 under this act shall raise a rebuttable presumption of having
3 done so in retaliation for the exercise of those rights.

4 (d) No employer or labor organization may: (1) require as a
5 condition of employment that an employe refrain from inquiring
6 about, discussing or disclosing the amount of the employe's
7 wages; or (2) require an employe to sign a waiver or other
8 document that denies the employe the right to inquire about,
9 discuss or disclose the amount of the employe's wages.

10 Section 5. Collection of Unpaid Wages.--(a) An employer who
11 [wilfully and knowingly] violates the provisions of section 3 of
12 this act shall be liable to the employe or employes affected in
13 the amount of [their unpaid wages and in addition, an equal
14 amount as liquidated damages.] the sum of the following: (1) the
15 difference between the amount of wages paid and the maximum wage
16 paid any other employe for equal work; (2) compensatory damages;
17 (3) reasonable attorney fees and costs; (4) punitive damages, if
18 the violation is found to be intentional or committed with
19 reckless indifference to the employe's rights under this act;
20 and (5) any other legal and equitable relief as may be
21 appropriate, including, but not limited to, employment
22 reinstatement and promotion. Action to recover such wages [and],
23 damages and legal or equitable relief may be maintained in any
24 court of competent jurisdiction by any one or more employes for
25 and in behalf of himself or themselves and other employes
26 similarly situated. Any agreement between the employer and an
27 employe to work for less than the wage to which such employe is
28 entitled under this act shall be no defense to such action. [The
29 court in such action shall, in addition to any wages and
30 damages, allow a reasonable attorney's fee and costs of the

1 action to the plaintiff.] At the request of any employe paid
2 less than the wage to which he is entitled under this act and
3 due any damages as a result of a violation, the [Secretary of
4 Labor and Industry] secretary may take an assignment of such
5 wage and damages claim for collection and shall bring any legal
6 action necessary to collect such claim. The secretary shall not
7 be required to pay the filing fee or other costs in connection
8 with such action. The secretary shall have power to join various
9 claimants against the employer in one cause of action.

10 (b) Any action pursuant to the provisions of this act must
11 be brought within two years from the date upon which the
12 [violation complained of occurs.] employe knew of the violation
13 unless the violation is a wilful violation, in which case the
14 action must be brought within three years from the date upon
15 which the employe knew of the violation. Discrimination in wages
16 under this section occurs when: (1) a discriminatory wage
17 decision or practice is adopted; (2) when an individual is
18 subject to a discriminatory wage decision or practice; or (3)
19 when an individual is affected by application of a
20 discriminatory wage decision or practice. Discrimination in
21 wages shall be deemed to be a continuing violation each time
22 that wages paid resulted, in whole or in part, from a
23 discriminatory wage decision or practice.

24 Section 3. This act shall take effect in 30 days.