

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2356 Session of 2015

INTRODUCED BY DONATUCCI AND BULLOCK, SEPTEMBER 21, 2016

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, SEPTEMBER 21, 2016

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

9 The General Assembly of the Commonwealth of Pennsylvania
 10 hereby enacts as follows:

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

14 Section 2. Definitions.--* * *

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

19 * * *

20 (e.1) "Working conditions" shall include the circumstances
 21 considered when setting salary or wages, including reasonable

1 shift differentials, physical surroundings and hazards
2 encountered by employes performing a job.

3 * * *

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

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

1 * * *

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

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

5 (1) Require an employe refrain from inquiring about,
6 discussing or disclosing information about the employes' own
7 wages, including benefits or other compensation, or about any
8 other employes' wages.

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

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

18 (4) Retaliate or discharge an employe for any of the
19 following:

20 (i) Opposition to any violation of this act.

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

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

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

28 (v) Disclosing, inquiring about or discussing wages,
29 benefits or other compensation of the employe or another
30 employe.

1 (5) Contract with an employe to avoid complying with this
2 act. An employer may prohibit the disclosure of an employe's
3 compensation information without the written authorization of
4 the employe unless the information is a public record under the
5 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-
6 Know Law.

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

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

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

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

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

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

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

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

24 (i) One member shall represent employers.

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

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

29 (iv) One member shall represent the Pennsylvania Commission
30 for Women.

1 (v) One member shall represent the Pennsylvania chapter of
2 the National Organization of Women.

3 (vi) One member shall represent organized labor.

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

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

11 Section 5. Collection of Unpaid Wages.--(a) An employer who
12 wilfully and knowingly violates the provisions of section 3 or
13 3.1 of this act shall be liable to the employe or employes
14 affected in the amount of their unpaid wages and in addition, an
15 equal amount as liquidated damages. Action to recover such wages
16 and damages may be maintained in any court of competent
17 jurisdiction by any one or more employes for and in behalf of
18 himself or themselves and other employes similarly situated. Any
19 agreement between the employer and an employe to work for less
20 than the wage to which such employe is entitled under this act
21 shall be no defense to such action. The court in such action
22 shall, in addition to any wages and damages, allow a reasonable
23 attorney's fee and costs of the action to the plaintiff. At the
24 request of any employe paid less than the wage to which he is
25 entitled under this act, the Secretary of Labor and Industry may
26 take an assignment of such wage claim for collection and shall
27 bring any legal action necessary to collect such claim. The
28 secretary shall not be required to pay the filing fee or other
29 costs in connection with such action. The secretary shall have
30 power to join various claimants against the employer in one

1 cause of action.

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

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

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

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

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

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

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

29 Section 8. Penalties.--(a) Any employer who wilfully and
30 knowingly violates any provisions of this act, or who discharges

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

12 * * *

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

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