

No. _____

LEGISLATIVE REFERENCE BUREAU

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By _____ District
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NO. _____

See next page for additional co-sponsors.

☐ Prior Session _____

Referred to Committee on

Date _____ 20 _____

Reported _____ 20 _____

As Committed-Amended

Recommendation

By Hon. _____

AN ACT
Amending the act of December 17,
1959 (P.L.1913, No.694), known as
the Equal Pay Law, further
providing for definitions and for
wage rates; providing for
additional violations; further
providing for collection of unpaid
wages and for penalties; and
establishing the Equal Pay
Commission.

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; further providing for
7 collection of unpaid wages and for penalties; and
8 establishing the Equal Pay Commission.

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 (e.1) "Commission" shall mean the Equal Pay Commission
16 established under section 8.1.

17 (e.2) "Comparable work" shall mean work that is
18 substantially similar, including substantially similar skill
19 levels, effort and responsibility. The term includes work that
20 is performed under similar working conditions.

1 (e.3) "Working conditions" includes the circumstances
2 considered when setting salary or wages, including reasonable
3 shift differentials, physical surroundings and hazards
4 encountered by employees performing a job.

5 * * *

6 Section 2. Section 3 of the act is amended to read:

7 Section 3. Wage Rates.--(a) No employer having employees
8 subject to any provisions of this section shall discriminate,
9 within any establishment in which such employees are employed,
10 between employees on the basis of sex by paying wages to employees
11 in such establishment at a rate less than the rate at which he
12 pays wages to employees of the opposite sex in such establishment
13 for equal work on [jobs, the performance of which, requires
14 equal skill, effort, and responsibility, and which are]

15 comparable work performed under similar working conditions,
16 except where such payment is made pursuant to (1) a seniority
17 system, so long as time spent on leave due to a pregnancy-
18 related condition or protected parental, family or medical leave
19 may not reduce seniority; (2) a merit system; (3) a system which
20 measures earnings by quantity or quality of production; [or] (4)
21 a differential based on any other factor other than [sex:] sex;
22 (5) the geographic location where a job is performed; (6)
23 education, training or experience to the extent the factors are
24 reasonably related to the job and consistent with business
25 necessity; or (7) travel if the travel is a regular and
26 necessary condition of the job: Provided, That any employer who
27 is paying a wage rate differential in violation of this
28 subsection shall not in order to comply with the provisions of
29 this subsection, reduce the wage rate of any employee. The job
30 title or job description alone shall not determine if two jobs

1 are comparable.

2 (b) No labor organization, or its agents, representing
3 employees of an employer having employees subject to any
4 provisions of this section, shall cause or attempt to cause such
5 an employer to discriminate against an employee in violation of
6 subsection (a) of this section.

7 (c) An employer shall post a notice in the workplace
8 informing employees of their rights under this act. The notice
9 shall be posted in a conspicuous place in at least one location
10 where employees congregate.

11 Section 3. The act is amended by adding a section to read:

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

14 (1) Require an employee to refrain from inquiring about,
15 discussing or disclosing information about the employee's own
16 wages, including benefits or other compensation, or about any
17 other employee's wages.

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

23 (3) Prior to an employer offering employment and
24 compensation to an employee and receiving written authorization
25 from the employee, seek salary, benefit or prior wages from a
26 former or current employer.

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

29 (i) Complaining about, opposing, instituting a proceeding
30 based on, or attempting or planning to complain about or oppose

1 or institute a proceeding based on, a violation of this act.

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

4 (iii) Assisting an investigation or otherwise participating
5 in an action under this act.

6 (iv) Disclosing, inquiring about or discussing wages,
7 benefits or other compensation of the employee or another
8 employee.

9 (5) Contract with an employee to avoid complying with this
10 act.

11 (b) An employer may prohibit the disclosure of an employee's
12 compensation information without the written authorization of
13 the employee unless the information is a public record under the
14 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-
15 Know Law.

16 Section 4. Sections 5 and 8(a) of the act are amended to
17 read:

18 Section 5. Collection of Unpaid Wages.--(a) An employer who
19 wilfully and knowingly violates the provisions of section 3 or
20 3.1 of this act shall be liable to the employee or employees
21 affected in the amount of their unpaid wages and in addition, an
22 equal amount as liquidated damages. Action to recover such wages
23 and damages may be maintained in any court of competent
24 jurisdiction by any one or more employees for and in behalf of
25 himself or themselves and other employees similarly situated. Any
26 agreement between the employer and an employee to work for less
27 than the wage to which such employee is entitled under this act
28 shall be no defense to such action. The court in such action
29 shall, in addition to any wages and damages, allow a reasonable
30 attorney's fee and costs of the action to the plaintiff. At the

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

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

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

17 (2) An employee becomes subject to a discriminatory
18 compensation decision or other practice.

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

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

29 (d) Self-evaluations or remedial steps taken by the employer
30 shall not be admissible in any proceeding as evidence of a

1 violation of this act. The lack of a self-evaluation shall not
2 be used against the employer.

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

16 * * *

17 Section 5. The act is amended by adding a section to read:

18 Section 8.1. Commission.--(a) The Equal Pay Commission is
19 established to investigate, analyze and study the factors,
20 causes and impact of pay disparity based on gender.

21 (b) The commission shall consist of the following members:

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

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

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

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

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

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

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

4 (i) One member shall represent employers.

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

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

9 (iv) One member shall represent the Pennsylvania Commission
10 for Women.

11 (v) One member shall represent the Pennsylvania chapter of
12 the National Organization of Women.

13 (vi) One member shall represent organized labor.

14 (c) The commission shall hold its first meeting within
15 forty-five days of the effective date of this section,
16 regardless of the status of the appointments. The commission
17 shall hold other meetings at the call of the chairperson.

18 (d) A member may not receive compensation for the member's
19 services, but shall be reimbursed for all necessary travel and
20 other reasonable expenses incurred in connection with the
21 performance of the member's duties.

22 (e) The Department of Labor and Industry shall provide
23 administrative support, meeting space and any other assistance
24 required by the commission to carry out the commission's duties
25 under this section. The department shall also provide the
26 commission with data, research and other information upon
27 request by the commission.

28 (f) The commission shall submit a report of the commission's
29 findings to the General Assembly no later than January 1, 2020,
30 and annually on January 1 until January 1, 2025. The final

1 report may include proposed legislation to further reduce gender
2 based pay disparities.

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