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, for wage rates and for
collection of unpaid wages.

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

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

Section 2. Definitions.--(a) The term "employe," as used in
this act, shall mean any person employed for hire in any
lawful business, industry, trade or profession, or in any
other lawful enterprise in which individuals are gainfully
employed; including individuals employed by the Commonwealth or
any of its political subdivisions, including public bodies[;
Provided, however, That the term "employe" as used in this act
shall not apply to any person or persons who is or are subject to section 6 of the Federal Fair Labor Standards Act (Act of June 25, 1938, as amended).

* * *

(e.1) The term "wages" includes all earnings of an employe, regardless of whether determined on time, task, piece, commission or other method of calculation, including salaries based on annual or other basis. The term "wages" also includes fringe benefits, wage supplements or other compensation, whether payable by the employer from funds of the employer or from amounts withheld from the employe's pay by the employer.

(e.2) The term "comparable work" shall mean work that is substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions.

(e.3) The term "working conditions" shall include the circumstances customarily taken into consideration in setting salary or wages, including, but not limited to, reasonable shift differentials, physical surroundings and hazards encountered by employes performing a job.

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Section 2. Sections 3 and 5 of the act are amended to read:

Section 3. Wage Rates.--(a) No employer having employes subject to any provisions of this section shall discriminate within any establishment in which such employes are employed, between employes on the basis of sex by paying wages to employes [in such establishment] at a rate less than the rate at which [he] the employer pays wages to employes of the opposite sex [in such establishment] for [equal] comparable work [on jobs, the performance of which, requires equal skill, effort, and
responsibility, and which are performed under similar working conditions], except [where such payment is made pursuant to (1) a seniority system; (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: Provided, That any] if the employer demonstrates:

(1) The wage differential is based upon one or more of the following factors:
   (i) A bona fide seniority system.
   (ii) A bona fide merit system.
   (iii) A bona fide system which measures earnings by quantity or quality of production or sales.
   (iv) A bona fide factor other than sex, including education, training or experience.

(2) Time spent on leave due to a pregnancy-related condition and protected parental, family and medical leave does not reduce seniority under paragraph (1)(i).

(3) Each factor relied upon is applied reasonably.

(4) The one or more factors relied upon account for the entire wage differential.

(5) The job title or job description alone does not determine if two jobs are comparable.

(a.1) Any employer who is paying a wage rate differential in violation of [this] subsection (a) shall not, in order to comply with the provisions of [this] subsection (a), reduce the wage rate of any employe.

(a.2) The bona fide factor defense described under subsection (a)(1)(iv):

(1) Shall apply only if the employer demonstrates that the bona fide factor:
(i) Is not based upon or derived from a sex-based differential in compensation.

(ii) Is job-related with respect to the position in question.

(iii) Is consistent with business necessity. For purposes of this subparagraph, "business necessity" means an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve.

(2) Shall not apply if the employe demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential.

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

(c) It shall be an unlawful practice for an employer to:

(1) Require as a condition of employment that an employe refrain from inquiring about, discussing or disclosing information about the amount of the employe's wages or any other employe's wages, including by requiring an employe to sign a waiver or other document that purports to deny the employe the right to inquire about, discuss, share or disclose the amount of the employe's or another employe's wages.

(2) Rely on the wage history of a prospective employe from any current or former employer of the individual in determining the wages for the individual, except that an employer may rely on prior wage history if it is provided by a prospective employe to support a wage higher than the wage offered by the employer.
(3) Request or require as a condition of being interviewed, or as a condition of continuing to be considered for an offer of employment or as a condition of employment, that a prospective employe disclose wages from a current or former employer.

(4) Seek from a current or former employer the previous wages of a prospective employe, except that an employer may seek to confirm prior wage information after an offer of employment with compensation has been made to the prospective employe and the prospective employe responds to the offer by providing prior wage information to support a wage higher than offered by the employer. Under these circumstances, the employer may only seek to confirm prior wages after obtaining written authorization by the prospective employe to do so.

(5) Contract with an employe to avoid complying with this act.

(6) Discharge or in any other manner retaliate against any employe or prospective employe because the employe or prospective employe:

(i) opposed any act or practice made unlawful by this act;
(ii) made a report, verbally or in writing, alleging a violation of this act;
(iii) made or is about to make a complaint or instituted or caused to be instituted or is about to institute or cause to be instituted any proceeding under or related to this act, including an investigation conducted by the employer; or
(iv) testified, assisted or participated or is about to testify, assist or participate in any manner in an investigation or proceeding related to any act or practice made unlawful under this act.

(d) Taking adverse action against a person within ninety
Section 5. Collection of Unpaid Wages.--(a) An employer who [wilfully and knowingly] violates the provisions of section 3 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.] the sum of the following:

(1) The difference between the amount of wages paid and the maximum wage paid any other employe for equal work.

(2) Compensatory damages.

(3) Reasonable attorney fees and costs.

(4) Punitive damages, if the violation is found to be intentional or committed with reckless indifference to the employe's rights under this act.

(5) Any other legal and equitable relief as may be appropriate, including, but not limited to, employment reinstatement and promotion.

(a.1) Action to recover such wages [and damages and legal or equitable relief] 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.

(a.2) 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.] An employe's previous wage or salary history shall not be a defense to an action.

(a.3) At the request of any employe paid less than the wage
to which he is entitled under this act and due any damages as a result of a violation, the [Secretary of Labor and Industry] secretary may take an assignment of such wage and damages 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.

(a.4) The Attorney General may also bring an action to collect unpaid wages on behalf of one or more employes, as well as damages, equitable relief and attorney fees and costs. The costs and attorney fees shall be paid to the Commonwealth. The Attorney General shall not be required to pay any filing fee or other cost in connection with the 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[.] unless the violation is a wilful violation, in which case the action must be brought within three years from the date of the violation. For the purposes of this section, a violation occurs if:

(1) a discriminatory wage decision or practice is adopted;

(2) an individual is subject to a discriminatory wage decision or practice; or

(3) an individual is affected by application of a discriminatory wage decision or practice, including each time wages paid result, in whole or in part, from a discriminatory wage decision or practice.

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