

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 931 Session of 2017

INTRODUCED BY DONATUCCI, BULLOCK, DRISCOLL, KINSEY, SCHWEYER, FREEMAN, J. HARRIS, DERMODY, CALTAGIRONE, BOBACK, YOUNGBLOOD, BOYLE, D. MILLER, FRANKEL, DEASY, DAVIS, DAVIDSON, McCLINTON, SOLOMON, WATSON, V. BROWN, ROEBUCK, READSHAW, McNEILL, FITZGERALD, McCARTER, D. COSTA, KRUEGER-BRANEKY, HILL-EVANS AND TOOHL, MARCH 23, 2017

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MARCH 23, 2017

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

1 is performed under similar working conditions.

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

6 \* \* \*

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

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

1 title or job description alone shall not determine if two jobs  
2 are comparable.

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

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

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

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

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

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

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

28 (4) Retaliate against or discharge an employe for any of the  
29 following:

30 (i) Complaining about, opposing, instituting a proceeding

1 based on, or attempting or planning to complain about or oppose  
2 or institute a proceeding based on, a violation of this act.

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

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

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

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

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

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

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

1 attorney's fee and costs of the action to the plaintiff. At the  
2 request of any employe paid less than the wage to which he is  
3 entitled under this act, the Secretary of Labor and Industry may  
4 take an assignment of such wage claim for collection and shall  
5 bring any legal action necessary to collect such claim. The  
6 secretary shall not be required to pay the filing fee or other  
7 costs in connection with such action. The secretary shall have  
8 power to join various claimants against the employer in one  
9 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.] An action under this act must  
13 be commenced within three years of the date of the alleged  
14 violation. A violation shall be deemed to have occurred when any  
15 of the following occurs:

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

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

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

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

30 (d) Self-evaluations or remedial steps taken by the employer

1 shall not be admissible in any proceeding as evidence of a  
2 violation of this act. The lack of a self-evaluation shall not  
3 be used against the employer.

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

17 \* \* \*

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

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

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

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

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

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

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

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

1 Representatives.

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

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

5 (i) One member shall represent employers.

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

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

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

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

14 (vi) One member shall represent organized labor.

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

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

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

29 (f) The commission shall submit a report of the commission's  
30 findings to the General Assembly no later than January 1, 2019,

1 and annually on January 1 until January 1, 2024. The final  
2 report may include proposed legislation to further reduce gender  
3 based pay disparities.

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