

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 166 Session of 2019

INTRODUCED BY DONATUCCI, T. DAVIS, MURT, FRANKEL, HILL-EVANS, SCHLOSSBERG, CALTAGIRONE, ISAACSON, KIRKLAND, O'MARA, YOUNGBLOOD, SHUSTERMAN, A. DAVIS, KORTZ, SCHWEYER, ULLMAN, READSHAW, FREEMAN, DEASY, STRUZZI, GOODMAN, DERMODY, McCLINTON, DeLUCA, CIRESI, NEILSON, SOLOMON AND DAWKINS, JANUARY 28, 2019

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JANUARY 28, 2019

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

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 shall 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 shall
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, 2020,

1 and annually on January 1 until January 1, 2025. 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.