

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 850 Session of 2019

INTRODUCED BY SIMS, T. DAVIS, SOLOMON, RABB, DONATUCCI, ZABEL, OTTEN, KENYATTA, KINSEY, BURGOS, HILL-EVANS, CALTAGIRONE, DeLUCA, ISAACSON, SCHLOSSBERG, YOUNGBLOOD, FREEMAN, CIRESI, A. DAVIS, MURT, TOOHL, McNEILL, DALEY, GOODMAN, GALLOWAY, STURLA, McCARTER, FRANKEL AND DEASY, APRIL 2, 2019

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 2, 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, for wage rates and for
 6 collection of unpaid wages.

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

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

12 Section 2. Definitions.--(a) The term "employee," as used in
 13 this act, shall mean any person employed for hire in any
 14 [lawful] business, industry, trade or profession, or in any
 15 other [lawful] enterprise in which individuals are gainfully
 16 employed; including individuals employed by the Commonwealth or
 17 any of its political subdivisions, including public bodies[:
 18 Provided, however, That the term "employee" as used in this act

1 shall not apply to any person or persons who is or are subject
2 to section 6 of the Federal Fair Labor Standards Act (Act of
3 June 25, 1938, as amended)].

4 * * *

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

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

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

21 * * *

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

23 Section 3. Wage Rates.--(a) No employer having employes
24 subject to any provisions of this section shall discriminate[,
25 within any establishment in which such employes are employed,]
26 between employes on the basis of sex by paying wages to employes
27 [in such establishment] at a rate less than the rate at which
28 [he] the employer pays wages to employes of the opposite sex [in
29 such establishment] for [equal] comparable work [on jobs, the
30 performance of which, requires equal skill, effort, and

1 responsibility, and which are performed under similar working
2 conditions], except [where such payment is made pursuant to (1)
3 a seniority system; (2) a merit system; (3) a system which
4 measures earnings by quantity or quality of production; or (4) a
5 differential based on any other factor other than sex: Provided,
6 That any] if the employer demonstrates:

7 (1) The wage differential is based upon one or more of the
8 following factors:

9 (i) A bona fide seniority system.

10 (ii) A bona fide merit system.

11 (iii) A bona fide system which measures earnings by quantity
12 or quality of production or sales.

13 (iv) A bona fide factor other than sex, including education,
14 training or experience.

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

18 (3) Each factor relied upon is applied reasonably.

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

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

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

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

29 (1) Shall apply only if the employer demonstrates that the
30 bona fide factor:

1 (i) Is not based upon or derived from a sex-based
2 differential in compensation.

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

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

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

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

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

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

26 (2) Rely on the wage history of a prospective employe from
27 any current or former employer of the individual in determining
28 the wages for the individual, except that an employer may rely
29 on prior wage history if it is provided by a prospective employe
30 to support a wage higher than the wage offered by the employer.

1 (3) Request or require as a condition of being interviewed,
2 or as a condition of continuing to be considered for an offer of
3 employment or as a condition of employment, that a prospective
4 employee disclose wages from a current or former employer.

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

14 (5) Contract with an employee to avoid complying with this
15 act.

16 (6) Discharge or in any other manner retaliate against any
17 employee or prospective employee because the employee or
18 prospective employee:

19 (i) opposed any act or practice made unlawful by this act;

20 (ii) made a report, verbally or in writing, alleging a
21 violation of this act;

22 (iii) made or is about to make a complaint or instituted or
23 caused to be instituted or is about to institute or cause to be
24 instituted any proceeding under or related to this act,
25 including an investigation conducted by the employer; or

26 (iv) testified, assisted or participated or is about to
27 testify, assist or participate in any manner in an investigation
28 or proceeding related to any act or practice made unlawful under
29 this act.

30 (d) Taking adverse action against a person within ninety

1 days of the person's exercise of rights protected under this act
2 shall raise a rebuttable presumption of having done so in
3 retaliation for the exercise of those rights.

4 Section 5. Collection of Unpaid Wages.--(a) An employer who
5 [wilfully and knowingly] violates the provisions of section 3 of
6 this act shall be liable to the employe or employes affected in
7 the amount of [their unpaid wages and in addition, an equal
8 amount as liquidated damages.] the sum of the following:

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

11 (2) Compensatory damages.

12 (3) Reasonable attorney fees and costs.

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

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

19 (a.1) Action to recover such wages [and], damages and legal
20 or equitable relief may be maintained in any court of competent
21 jurisdiction by any one or more employes for and in behalf of
22 himself or themselves and other employes similarly situated.

23 (a.2) Any agreement between the employer and an employe to
24 work for less than the wage to which such employe is entitled
25 under this act shall be no defense to such action. [The court in
26 such action shall, in addition to any wages and damages, allow a
27 reasonable attorney's fee and costs of the action to the
28 plaintiff.] An employe's previous wage or salary history shall
29 not be a defense to an action.

30 (a.3) At the request of any employe paid less than the wage

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

9 (a.4) The Attorney General may also bring an action to
10 collect unpaid wages on behalf of one or more employes, as well
11 as damages, equitable relief and attorney fees and costs. The
12 costs and attorney fees shall be paid to the Commonwealth. The
13 Attorney General shall not be required to pay any filing fee or
14 other cost in connection with the action.

15 (b) Any action pursuant to the provisions of this act must
16 be brought within two years from the date upon which the
17 violation complained of occurs[.] unless the violation is a
18 wilful violation, in which case the action must be brought
19 within three years from the date of the violation. For the
20 purposes of this section, a violation occurs if:

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

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

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

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