

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 38 Session of 2019

INTRODUCED BY SCHWANK, FARNESE, HUGHES AND COSTA,  
JANUARY 11, 2019

REFERRED TO LABOR AND INDUSTRY, JANUARY 11, 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 wage rates and for collection of unpaid  
6 wages.

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

9 Section 1. Section 3 of the act of December 17, 1959  
10 (P.L.1913, No.694), known as the Equal Pay Law, is amended by  
11 adding subsections to read:

12 Section 3. Wage Rates.--\* \* \*

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

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

1 (2) Rely on the wage history of a prospective employe from  
2 any current or former employer of the individual in determining  
3 the wages for the individual, except that an employer may rely  
4 on prior wage history when it is provided by a prospective  
5 employe to support a wage higher than the wage offered by the  
6 employer.

7 (3) Request or require as a condition of being interviewed,  
8 or as a condition of continuing to be considered for an offer of  
9 employment or as a condition of employment, that a prospective  
10 employe disclose wages from a current or former employer.

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

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

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

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

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

28 (iii) made or is about to make a complaint or instituted or  
29 caused to be instituted or is about to institute or cause to be  
30 instituted any proceeding under or related to this act,

1 including an investigation conducted by the employer; or  
2 (iv) testified, assisted or participated or is about to  
3 testify, assist or participate in any manner in an investigation  
4 or proceeding related to any act or practice made unlawful under  
5 this act.

6 (d) Taking adverse action against a person within ninety  
7 days of the person's exercise of rights protected under this act  
8 shall raise a rebuttable presumption of having done so in  
9 retaliation for the exercise of those rights.

10 Section 2. Section 5 of the act is amended to read:

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

16 (1) the difference between the amount of wages paid and the  
17 maximum wage paid any other employe for equal work;

18 (2) compensatory damages;

19 (3) reasonable attorney fees and costs;

20 (4) punitive damages, if the violation is found to be  
21 intentional or committed with reckless indifference to the  
22 employe's rights under this act; and

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

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

30 (a.2) Any agreement between the employer and an employe to

1 work for less than the wage to which such employe is entitled  
2 under this act shall be no defense to such action. [The court in  
3 such action shall, in addition to any wages and damages, allow a  
4 reasonable attorney's fee and costs of the action to the  
5 plaintiff.] An employe's previous wage or salary history shall  
6 not be a defense to an action.

7 (a.3) At the request of any employe paid less than the wage  
8 to which he is entitled under this act and due any damages as a  
9 result of a violation, the [Secretary of Labor and Industry]  
10 secretary may take an assignment of such wage and damages claim  
11 for collection and shall bring any legal action necessary to  
12 collect such claim. The secretary shall not be required to pay  
13 the filing fee or other costs in connection with such action.  
14 The secretary shall have power to join various claimants against  
15 the employer in one cause of action.

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

22 (b) Any action pursuant to the provisions of this act must  
23 be brought within two years from the date upon which the  
24 violation complained of occurs[.] unless the violation is a  
25 wilful violation, in which case the action must be brought  
26 within three years from the date of the violation. For the  
27 purposes of this section, a violation occurs when:

28 (1) a discriminatory wage decision or practice is adopted;  
29 (2) an individual is subject to a discriminatory wage  
30 decision or practice; or

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

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