S T A T E O F N E W Y O R K

2200

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to enacting the "New York state fair pay act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The labor law is amended by adding a new article 21 to read as follows:

ARTICLE 21

NEW YORK STATE FAIR PAY ACT

SECTION 750. SHORT TITLE.
751. FINDINGS AND STATEMENT OF PURPOSE.
752. DEFINITIONS.
753. PROHIBITION AGAINST DISCRIMINATION IN WAGES.
754. OTHER PROHIBITED ACTS.
755. WAGE DISCLOSURE, RECORDKEEPING, AND REPORTING REQUIREMENTS.
756. REMEDIES AND ENFORCEMENT.
757. REGULATIONS.

S 750. SHORT TITLE. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE "NEW YORK STATE FAIR PAY ACT".

S 751. FINDINGS AND STATEMENT OF PURPOSE. (A) THE LEGISLATURE FINDS THE FOLLOWING:

(1) DESPITE FEDERAL AND STATE LAWS BANNING DISCRIMINATION IN EMPLOYMENT AND PAY, IN BOTH THE PRIVATE AND PUBLIC SECTOR, WAGE DIFFERENTIALS PERSIST BETWEEN WOMEN AND MEN AND BETWEEN MINORITIES AND NON-MINORITIES IN THE SAME JOBS AND IN JOBS THAT ARE DISSIMILAR BUT THAT REQUIRE EQUIVALENT COMPOSITES OF SKILL, EFFORT, RESPONSIBILITY AND WORKING CONDITIONS;

(2) THE EXISTENCE OF SUCH WAGE DIFFERENTIALS--

(A) DEPRESSES WAGES AND LIVING STANDARDS FOR EMPLOYEES NECESSARY FOR THEIR HEALTH AND EFFICIENCY;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(B) REDUCES FAMILY INCOMES AND CONTRIBUTES TO THE HIGHER POVERTY RATES AMONG FEMALE-HEADED AND MINORITY HOUSEHOLDS;
(C) PREVENTS THE MAXIMUM UTILIZATION OF THE AVAILABLE LABOR RESOURCES;
(D) TENDS TO CAUSE LABOR DISPUTES, THEREBY BURDENING, AFFECTING, AND OBSTRUCTING COMMERCE;
(E) CONSTITUTES AN UNFAIR METHOD OF COMPETITION; AND
(F) VIOLATES THE STATE'S PUBLIC POLICY AGAINST DISCRIMINATION;
(3) DISCRIMINATION IN WAGE-SETTING PRACTICES HAS PLAYED A ROLE IN DEPRESSING WAGES FOR WOMEN AND MINORITIES GENERALLY;
(4) MANY INDIVIDUALS WORK IN OCCUPATIONS THAT ARE DOMINATED BY INDIVIDUALS OF THEIR SAME SEX, RACE, AND/OR NATIONAL ORIGIN, AND DISCRIMINATION IN HIRING, JOB ASSIGNMENT AND PROMOTION HAS PLAYED A ROLE IN ESTABLISHING AND MAINTAINING SEGREGATED WORK FORCES;
(5) ELIMINATING DISCRIMINATION IN COMPENSATION BASED ON SEX, RACE AND NATIONAL ORIGIN WOULD HAVE POSITIVE EFFECTS, INCLUDING--
(A) PROVIDING A SOLUTION TO PROBLEMS IN THE ECONOMY CREATED BY DISCRIMINATORY WAGE DIFFERENTIALS;
(B) REDUCING THE NUMBER OF WORKING WOMEN AND PEOPLE OF COLOR EARNING LOW WAGES, THEREBY LOWERING THEIR INCIDENCE OF POVERTY DURING NORMAL WORKING YEARS AND IN RETIREMENT; AND
(C) PROMOTING STABLE FAMILIES BY RAISING FAMILY INCOMES.
(B) IT IS THE PURPOSE OF THIS ARTICLE TO CORRECT AND AS RAPIDLY AS PRACTICABLE TO ELIMINATE DISCRIMINATORY WAGE PRACTICES BASED ON SEX, RACE AND/OR NATIONAL ORIGIN.
S 752. DEFINITIONS. (A) THE TERM "EMPLOY" SHALL MEAN TO SUFFER OR PERMIT TO WORK.
(B) THE TERM "EMPLOYEE" SHALL MEAN ANY PERSON EMPLOYED BY AN EMPLOYER AND INCLUDES ALL OF AN EMPLOYER'S PERMANENT EMPLOYEES, WHETHER WORKING FULL-TIME OR PART-TIME, AND ANY TEMPORARY EMPLOYEE EMPLOYED BY AN EMPLOYER FOR A PERIOD OF AT LEAST THREE MONTHS. "EMPLOYEE" SHALL NOT INCLUDE ANY INDIVIDUAL EMPLOYED BY HIS OR HER PARENTS, SPOUSE OR CHILD.
(C) THE TERM "EMPLOYER" SHALL MEAN ANY PERSON WHO EMPLOYS THREE OR MORE PERSONS AND INCLUDES THE STATE AND ALL POLITICAL SUBDIVISIONS THEREOF.
(D) THE TERM "EQUIVALENT JOBS" MEANS JOBS OR OCCUPATIONS THAT ARE EQUAL WITHIN THE MEANING OF THE EQUAL PAY ACT OF 1963, 29 U.S.C. 206(D), OR JOBS OR OCCUPATIONS THAT ARE DISSIMILAR BUT WHOSE REQUIREMENTS ARE EQUIVALENT, WHEN VIEWED AS A COMPOSITE OF SKILLS, EFFORT, RESPONSIBILITY AND WORKING CONDITIONS. EQUIVALENCY OF SKILL, EFFORT, RESPONSIBILITY AND WORKING CONDITIONS SHALL BE DETERMINED BY UTILIZING JOB COMPARISON METHODOLOGIES THAT DO NOT IGNORE OR UNDERVALUE THE WORTH OF JOBS WHERE WOMEN AND MINORITIES ARE DISPROPORTIONATELY REPRESENTED.
(E) THE TERM "PERSON" SHALL MEAN ONE OR MORE INDIVIDUALS, PARTNERSHIPS, ASSOCIATIONS, CORPORATIONS, LIMITED LIABILITY COMPANIES, LEGAL REPRESENTATIVES, TRUSTEES, TRUSTEES IN BANKRUPTCY, RECEIVERS AND THE STATE AND ALL POLITICAL SUBDIVISIONS AND AGENCIES THEREOF.
(F) THE TERM "LABOR ORGANIZATION" SHALL MEAN ANY ORGANIZATION THAT EXISTS FOR THE PURPOSE, IN WHOLE OR PART, OF COLLECTIVE BARGAINING OR OF DEALING WITH EMPLOYERS CONCERNING GRIEVANCES, TERMS OF CONDITIONS OF EMPLOYMENT, OR OF OTHER MUTUAL AID OR PROTECTION IN CONNECTION WITH EMPLOYMENT.
(G) THE TERM "MARKET RATES" SHALL MEAN THE RATES THAT EMPLOYERS WITHIN A PRESCRIBED GEOGRAPHIC AREA ACTUALLY PAY, OR ARE REPORTED TO PAY FOR SPECIFIC JOBS, AS DETERMINED BY FORMAL OR INFORMAL SURVEYS, WAGE STUDIES, OR OTHER MEANS.

(H) THE TERM "WAGES" AND WAGE "RATES" SHALL INCLUDE ALL COMPENSATION IN ANY FORM THAN AN EMPLOYER PROVIDES TO EMPLOYEES IN PAYMENT FOR WORK DONE OR SERVICES RENDERED, INCLUDING BUT NOT LIMITED TO BASE PAY, BONUSES, COMMISSIONS, AWARDS, TIPS, OR VARIOUS FORMS OF NON-MONETARY COMPENSATION IF PROVIDED IN LIEU OF OR IN ADDITION TO MONETARY COMPENSATION AND THAT HAVE ECONOMIC VALUE TO AN EMPLOYEE.

S 753. PROHIBITION AGAINST DISCRIMINATION IN WAGES. (A) IT SHALL BE AN UNLAWFUL EMPLOYMENT PRACTICE IN VIOLATION OF THIS ARTICLE FOR AN EMPLOYER TO DISCRIMINATE BETWEEN EMPLOYEES ON THE BASIS OF SEX, RACE AND/OR NATIONAL ORIGIN BY:

(1) PAYING WAGES TO EMPLOYEES AT A RATE LESS THAN THE RATE PAID TO EMPLOYEES OF THE OPPOSITE SEX OR OF A DIFFERENT RACE OR NATIONAL ORIGIN FOR WORK IN EQUIVALENT JOBS; AND/OR

(2) PAYING WAGES TO EMPLOYEES IN A JOB THAT IS DOMINATED BY EMPLOYEES OF A PARTICULAR SEX, RACE OR NATIONAL ORIGIN AT A RATE LESS THAN THE RATE AT WHICH SUCH EMPLOYER PAYS TO EMPLOYEES IN ANOTHER JOB THAT IS DOMINATED BY EMPLOYEES OF THE OPPOSITE SEX OR OF A DIFFERENT RACE OR NATIONAL ORIGIN, FOR WORK ON EQUIVALENT JOBS.

(B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION, IT SHALL NOT BE AN UNLAWFUL EMPLOYMENT PRACTICE FOR AN EMPLOYER TO PAY DIFFERENT WAGE RATES TO EMPLOYEES, WHERE SUCH PAYMENTS ARE MADE PURSUANT TO:

(1) A BONA FIDE SENIORITY OR MERIT SYSTEM;

(2) A SYSTEM THAT MEASURES EARNINGS BY QUANTITY OR QUALITY OF PRODUCTION, OR

(3) ANY BONA FIDE FACTOR OTHER THAN SEX, RACE, OR NATIONAL ORIGIN, PROVIDED, HOWEVER, THAT WAGE DIFFERENTIALS BASED ON VARYING MARKET RATES FOR EQUIVALENT JOBS OR THE DIFFERING ECONOMIC BENEFITS TO THE EMPLOYER OF EQUIVALENT JOBS SHALL NOT BE CONSIDERED DIFFERENTIALS BASED ON BONA FIDE FACTORS OTHER THAN SEX, RACE OR NATIONAL ORIGIN.

(C) AN EMPLOYER WHO IS PAYING WAGES IN VIOLATION OF THIS SECTION SHALL NOT, IN ORDER TO COMPLY WITH THE PROVISIONS OF THIS SECTION, REDUCE THE WAGE OF ANY EMPLOYEE.

(D) NO LABOR ORGANIZATION OR ITS AGENTS REPRESENTING EMPLOYEES OF AN EMPLOYER HAVING EMPLOYEES SUBJECT TO ANY PROVISION OF THIS CHAPTER SHALL CAUSE OR ATTEMPT TO CAUSE SUCH AN EMPLOYER TO DISCRIMINATE AGAINST AN EMPLOYEE IN VIOLATION OF SUBDIVISION (A) OF THIS SECTION.

(E) (1) THE DEPARTMENT SHALL PROMULGATE REGULATIONS SPECIFYING THE CRITERIA FOR DETERMINING WHETHER A JOB IS DOMINATED BY EMPLOYEES OF A PARTICULAR SEX, RACE, OR NATIONAL ORIGIN. CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO, FACTORS SUCH AS WHETHER THE JOB HAS EVER BEEN FORMALLY CLASSIFIED AS OR TRADITIONALLY CONSIDERED TO BE A "MALE" OR "FEMALE" OR "WHITE" OR "MINORITY" JOB; WHETHER THERE IS A HISTORY OF DISCRIMINATION AGAINST WOMEN AND/OR PEOPLE OF COLOR WITH REGARD TO WAGES, ASSIGNMENT OR ACCESS TO JOBS, OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT; AND THE DEMOGRAPHIC COMPOSITION OF THE WORK FORCE IN EQUIVALENT JOBS E.G., NUMBERS OR PERCENTAGES OF WOMEN, MEN, WHITE PERSONS AND PEOPLE OF COLOR. THE REGULATIONS SHALL NOT INCLUDE A LIST OF JOBS.

(2) THE DEPARTMENT SHALL PROMULGATE REGULATIONS SPECIFYING THE METHODOLOGY FOR DETERMINING EQUIVALENT SKILL, EFFORT, RESPONSIBILITY AND WORKING CONDITIONS. ANY METHODOLOGY PRESCRIBED BY THE DEPARTMENT SHALL ENSURE THAT COMPARISON SYSTEMS DO NOT IGNORE OR UNDERVALUE THE WORTH OF JOBS WHERE WOMEN AND MINORITIES ARE DISPROPORTIONATELY REPRESENTED.

(3) THE EQUIVALENCE OF JOBS DOMINATED BY EMPLOYEES OF A PARTICULAR SEX, RACE OR NATIONAL ORIGIN RELATIVE TO JOBS DOMINATED BY EMPLOYEES OF THE OPPOSITE SEX OR OF A DIFFERENT RACE OR ORIGIN WILL BE ESTABLISHED

THROUGH THE APPLICATION OF A SINGLE JOB COMPARISON SYSTEM THAT DOES NOT SYSTEMATICALLY IGNORE OR UNDERVALUE THE JOB CONTENT OF TRADITIONALLY FEMALE AND MINORITY JOBS.

S 754. OTHER PROHIBITED ACTS. IT SHALL BE AN UNLAWFUL EMPLOYMENT PRACTICE IN VIOLATION OF THIS ARTICLE FOR AN EMPLOYER:

(A) TO TAKE ADVERSE ACTIONS OR OTHERWISE DISCRIMINATE AGAINST ANY INDIVIDUAL BECAUSE SUCH INDIVIDUAL HAS OPPOSED ANY ACT OR PRACTICE MADE UNLAWFUL BY THIS ARTICLE, HAS SOUGHT TO ENFORCE RIGHTS PROTECTED UNDER THIS ARTICLE, OR HAS TESTIFIED, ASSISTED, OR PARTICIPATED IN ANY MANNER IN AN INVESTIGATION, HEARING, OR OTHER PROCEEDING TO ENFORCE THIS ARTICLE; OR

(B) TO DISCHARGE OR IN ANY OTHER MANNER DISCRIMINATE AGAINST, COERCE, INTIMIDATE, THREATEN, OR INTERFERE WITH ANY EMPLOYEE OR ANY OTHER PERSON BECAUSE THE EMPLOYEE INQUIRED ABOUT, DISCLOSED, COMPARED, OR OTHERWISE DISCUSSED THE EMPLOYEE'S WAGES OR THE WAGES OF ANY OTHER EMPLOYEE, OR BECAUSE THE EMPLOYEE EXERCISED, ENJOYED, AIDED, OR ENCOURAGED ANY OTHER PERSON TO EXERCISE OR ENJOY ANY RIGHT GRANTED OR PROTECTED BY THIS ARTICLE.

S 755. WAGE DISCLOSURE, RECORDKEEPING, AND REPORTING REQUIREMENTS. (A) UPON COMMENCEMENT OF AN INDIVIDUAL'S EMPLOYMENT AND AT LEAST ANNUALLY THEREAFTER, EVERY EMPLOYER SUBJECT TO THIS ARTICLE SHALL PROVIDE TO EACH EMPLOYEE A WRITTEN STATEMENT SUFFICIENT TO INFORM THE EMPLOYEE OF HIS OR HER JOB TITLE, WAGE RATE, AND HOW THE WAGE IS CALCULATED. THIS NOTICE SHALL BE SUPPLEMENTED WHENEVER AN EMPLOYEE IS PROMOTED OR REASSIGNED TO A DIFFERENT POSITION WITH THE EMPLOYER, PROVIDED, HOWEVER, THAT THE EMPLOYER IS NOT REQUIRED TO ISSUE SUPPLEMENTAL NOTIFICATIONS FOR TEMPORARY REASSIGNMENTS THAT ARE NO GREATER THAN THREE MONTHS IN DURATION.

(B) EVERY EMPLOYER SUBJECT TO THIS ARTICLE SHALL MAKE AND PRESERVE RECORDS THAT DOCUMENT THE WAGES PAID TO EMPLOYEES AND THAT DOCUMENT AND SUPPORT THE METHOD, SYSTEM, CALCULATIONS, AND OTHER BASES USED TO ESTABLISH, ADJUST, AND DETERMINE THE WAGE RATES PAID TO SAID EMPLOYER'S EMPLOYEES. EVERY EMPLOYER SUBJECT TO THIS ARTICLE SHALL PRESERVE SUCH RECORDS FOR SUCH PERIODS OF TIME AND SHALL MAKE SUCH REPORTS FROM THE RECORDS AS SHALL BE PRESCRIBED BY REGULATION OF THE DEPARTMENT.

(C) THE REGULATIONS PROMULGATED UNDER THIS ARTICLE, RELATING TO THE FORM OF REPORTS REQUIRED BY SUBDIVISION (B) OF THIS SECTION, SHALL PROVIDE FOR PROTECTION OF THE CONFIDENTIALITY OF EMPLOYEES, AND SHALL EXPRESSLY REQUIRE THAT REPORTS SHALL NOT INCLUDE THE NAMES OR OTHER IDENTIFYING INFORMATION FROM WHICH READERS COULD DISCERN THE IDENTITIES OF EMPLOYEES. THE REGULATIONS MAY ALSO IDENTIFY CIRCUMSTANCES THAT WARRANT A PROHIBITION ON DISCLOSURE OF REPORTS OR INFORMATION IDENTIFYING THE EMPLOYER.

(D) THE DEPARTMENT MAY USE THE INFORMATION AND DATA IT COLLECTS PURSUANT TO SUBDIVISION (B) OF THIS SECTION FOR STATISTICAL AND RESEARCH PURPOSES, AND MAY COMPILE AND PUBLISH SUCH STUDIES, ANALYSES, REPORTS, AND SURVEYS BASED ON THE INFORMATION AND DATA, AS IT MAY CONSIDER APPROPRIATE.

S 756. REMEDIES AND ENFORCEMENT. (A) (1) IN ANY ACTION IN WHICH A COURT OR JURY FINDS THAT AN EMPLOYER HAS ENGAGED IN ACTS IN VIOLATION OF THIS ARTICLE, THE COURT OR JURY SHALL AWARD TO ANY AFFECTED EMPLOYEE OR EMPLOYEES MONETARY RELIEF, INCLUDING BACK PAY IN AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE EMPLOYEE'S ACTUAL EARNINGS AND WHAT THE EMPLOYEE WOULD HAVE EARNED BUT FOR THE EMPLOYER'S UNLAWFUL PRACTICES, AND AN ADDITIONAL AMOUNT IN COMPENSATORY AND PUNITIVE DAMAGES, AS APPROPRIATE.

(2) IN ANY ACTION IN WHICH A COURT OR JURY FINDS THAT AN EMPLOYER HAS ENGAGED IN ACTS IN VIOLATION OF THIS ARTICLE, THE COURT SHALL ENJOIN THE

EMPLOYER FROM CONTINUING TO DISCRIMINATE AGAINST AFFECTED EMPLOYEES AND SHALL DIRECT THE EMPLOYER TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE; AND MAY ORDER THE EMPLOYER TO TAKE SUCH ADDITIONAL AFFIRMATIVE STEPS AS ARE NECESSARY, INCLUDING REINSTATEMENT OR RECLASSIFICATION OF AFFECTED WORKERS, TO ENSURE AN END TO UNLAWFUL DISCRIMINATION.

(3) IN ANY ACTION IN WHICH AN AFFECTED EMPLOYEE OR EMPLOYEES PREVAIL IN THEIR CLAIMS AGAINST EMPLOYERS, THE COURT SHALL, IN ADDITION TO ANY JUDGMENT AWARDED TO THE PLAINTIFFS, ALLOW A REASONABLE ATTORNEY'S FEE, REASONABLE EXPERT WITNESS FEES, AND OTHER COSTS OF THE ACTION TO BE PAID BY THE EMPLOYER.

(B) (1) AN ACTION TO RECOVER THE DAMAGES OR EQUITABLE RELIEF PRESCRIBED IN SUBDIVISION (A) OF THIS SECTION MAY BE MAINTAINED AGAINST ANY EMPLOYER IN ANY COURT OF COMPETENT JURISDICTION BY ANY ONE OR MORE EMPLOYEES OR THEIR REPRESENTATIVE FOR OR ON BEHALF OF:

(A) THE EMPLOYEES; OR

(B) THE EMPLOYEES AND OTHER EMPLOYEES SIMILARLY SITUATED.

(2) (A) THE DEPARTMENT SHALL RECEIVE, INVESTIGATE, AND ATTEMPT TO RESOLVE COMPLAINTS OF VIOLATIONS OF THIS ARTICLE.

(B) IN THE EVENT THE DEPARTMENT IS UNABLE TO REACH A VOLUNTARY RESOLUTION OF A COMPLAINT FILED UNDER THIS ARTICLE, THE DEPARTMENT MAY BRING AN ACTION IN ANY COURT OF COMPETENT JURISDICTION TO RECOVER THE EQUITABLE AND MONETARY RELIEF DESCRIBED IN SUBDIVISION (A) OF THIS SECTION.

(C) ANY SUMS RECOVERED BY THE DEPARTMENT PURSUANT TO THIS PARAGRAPH SHALL BE PAID DIRECTLY TO EACH EMPLOYEE AFFECTED BY THE EMPLOYER'S UNLAWFUL ACTS.

S 757. REGULATIONS. THE DEPARTMENT SHALL PRESCRIBE SUCH REGULATIONS AS ARE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

S 2. This act shall take effect on the ninetieth day after it shall have become a law; provided that the commissioner of labor shall promulgate rules and regulations necessary to effectuate the provisions of this act prior to such effective date.