

STATE OF NEW YORK

4240

2017-2018 Regular Sessions

IN ASSEMBLY

February 1, 2017

Introduced by M. of A. NOLAN, CAHILL, COLTON, COOK, DICKENS, GALEF, GLICK, GOTTFRIED, JAFFEE, JEAN-PIERRE, JENNE, LIFTON, MOSLEY, ROZIC, SEAWRIGHT, TITUS -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, HYNDMAN, SIMON -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the executive law, in relation to prohibiting employers from seeking salary history from prospective employees; to amend the labor law in relation to prohibiting employer compensation discrimination based on sex, race, or national origin; and to amend the civil service law, in relation to implementing a state policy of a fair, non-biased compensation structure

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 194 of the labor law, as added by chapter 548 of
2 the laws of 1966, subdivision 1 as amended and subdivisions 2, 3 and 4
3 as added by chapter 362 of the laws of 2015, is amended to read as
4 follows:
5 § 194. Differential in rate of pay because of sex, race, or national
6 origin prohibited. 1. No employee shall be paid a wage at a rate less
7 than the rate at which an employee of [~~the opposite~~] a different sex,
8 race, or national origin, in the same establishment is paid for equal or
9 substantially similar work on a job the performance of which requires
10 equal or substantially similar skill, effort and responsibility, and
11 which is performed under similar working conditions, except where
12 payment is made pursuant to a differential based on:
13 a. a seniority system;
14 b. a merit system;
15 c. a system which measures earnings by quantity or quality of
16 production; or
17 d. a bona fide factor other than sex, race or national origin, such as
18 education, training, or experience. Such factor: (i) shall not be based
19 upon or derived from a [~~sex-based~~] sex, race, or national origin based

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

LBD07473-02-7

1 differential in compensation and (ii) shall be job-related with respect
2 to the position in question and shall be consistent with business neces-
3 sity. Such exception under this paragraph shall not apply when the
4 employee demonstrates (A) that an employer uses a particular employment
5 practice that causes a disparate impact on the basis of sex, race, or
6 national origin (B) that an alternative employment practice exists that
7 would serve the same business purpose and not produce such differential,
8 and (C) that the employer has refused to adopt such alternative prac-
9 tice.

10 2. For the purpose of subdivision one of this section, "business
11 necessity" shall be defined as a factor that bears a manifest relation-
12 ship to the employment in question.

13 3. For the purposes of subdivision one of this section~~[7]~~: (a) employ-
14 ees shall be deemed to work in the same establishment if the employees
15 work for the same employer at workplaces located in the same geograph-
16 ical region, no larger than a county, taking into account population
17 distribution, economic activity, and/or the presence of municipalities;
18 and

19 (b) job description alone shall not determine work that is the same or
20 substantially similar.

21 4. (a) (i) No employer shall prohibit an employee from inquiring
22 about, discussing, or disclosing the wages of such employee or another
23 employee.

24 (ii) No employer shall require, as a condition of employment, that an
25 employee refrain from inquiring about, discussing, or disclosing infor-
26 mation about the employee's own wages, or about any other employee's
27 wages.

28 (iii) Nothing in this subdivision shall obligate an employer to
29 disclose an employee's wages to another employee or a third party.

30 (b) No employer shall seek the wage or salary history of a prospective
31 employee from the prospective employee or a current or former employer
32 or to require that a prospective employee's prior wage or salary history
33 meet certain criteria; provided, however, that: (i) if a prospective
34 employee has voluntarily disclosed such information, a prospective
35 employer may confirm prior wages or permit a prospective employee to
36 confirm prior wages or salary; and (ii) a prospective employer may seek
37 or confirm a prospective employee's wage or salary history after an
38 offer of employment with compensation has been negotiated and made to
39 the prospective employee.

40 ~~[(b)]~~ (c) An employer may, in a written policy provided to all employ-
41 ees, establish reasonable workplace and workday limitations on the time,
42 place and manner for inquires about, discussion of, or the disclosure of
43 wages. Such limitations shall be consistent with standards promulgated
44 by the commissioner and shall be consistent with all other state and
45 federal laws. Such limitations may include prohibiting an employee from
46 discussing or disclosing the wages of another employee without such
47 employee's prior permission.

48 ~~[(c)]~~ (d) Nothing in this subdivision shall require an employee to
49 disclose his or her wages. The failure of an employee to adhere to such
50 reasonable limitations in such written policy shall be an affirmative
51 defense to any claims made against an employer under this subdivision,
52 provided that any adverse employment action taken by the employer was
53 for failure to adhere to such reasonable limitations and not for mere
54 inquiry, discussion or disclosure of wages in accordance with such
55 reasonable limitations in such written policy.

1 ~~[(d)]~~ (e) This prohibition shall not apply to instances in which an
2 employee who has access to the wage information of other employees as a
3 part of such employee's essential job functions discloses the wages of
4 such other employees to individuals who do not otherwise have access to
5 such information, unless such disclosure is in response to a complaint
6 or charge, or in furtherance of an investigation, proceeding, hearing,
7 or action under this chapter, including an investigation conducted by
8 the employer.

9 ~~[(e)]~~ (f) No employer shall discharge or in any other manner retaliate
10 against an employee because the employee: (i) opposed any act or prac-
11 tice made unlawful by this section; (ii) made or indicated an intent to
12 make a complaint or has otherwise caused to be instituted any proceeding
13 under this section; (iii) testified or is about to testify, assist or
14 participate in any manner in an investigation or proceeding under this
15 section; or (iv) disclosed the employee's wages or has inquired about or
16 discussed the wages of any other employee.

17 (g) Nothing in this section shall be construed to limit the rights of
18 an employee provided under any other provision of law or collective
19 bargaining agreement.

20 § 2. Section 197 of the labor law, as amended by chapter 564 of the
21 laws of 2010, is amended to read as follows:

22 § 197. Civil penalty. 1. Any employer who fails to pay the wages of
23 his employees or shall differentiate in rate of pay because of sex,
24 race, or national origin as provided in this article, shall forfeit to
25 the people of the state the sum of five hundred dollars for each such
26 failure, to be recovered by the commissioner in any legal action neces-
27 sary, including administrative action or a civil action.

28 2. Any agreement between the employer and any employee to work for
29 less than the wage to which the employee is entitled under this article
30 shall not be a defense to an action. An employee's previous wage or
31 salary history shall also not be a defense to an action.

32 § 3. Section 198-a of the labor law is amended by adding a new subdi-
33 vision 4 to read as follows:

34 4. Any agreement between the employer and any employee to work for
35 less than the wage to which the employee is entitled under this article
36 shall not be a defense to an action. An employee's previous wage or
37 salary history shall also not be a defense to an action.

38 § 4. Section 115 of the civil service law, as added by chapter 790 of
39 the laws of 1958, is amended to read as follows:

40 § 115. Policy of the state. 1. In order to attract unusual merit and
41 ability to the service of the state of New York and all its political
42 subdivisions, to stimulate higher efficiency among the personnel, to
43 provide skilled leadership in administrative departments, to reward
44 merit and to insure to the people and the taxpayers of the state of New
45 York the highest return in services for the necessary costs of govern-
46 ment, it is hereby declared to be the policy of the state ~~[to provide~~
47 ~~equal pay for equal work,~~ and all its political subdivisions thereof,
48 consistent with the federal Equal Pay Act of 1963 (29 U.S.C. § 206), the
49 federal Civil Rights Act (42 U.S.C. § 2000e-2), article fifteen of the
50 executive law, and section forty-c of the civil rights law, to ensure a
51 fair, non-biased compensation structure for all employees in which sex,
52 race, or national origin is not considered either directly or indirectly
53 in determining the proper compensation for a title or in determining the
54 pay for any individual or group of employees, and to provide regular
55 increases in pay in proper proportion to increase of ability, increase
56 of output and increase of quality of work demonstrated in service.

2. It shall be an unlawful discriminatory practice, except as provided in subdivision five of this section, for any public employer in this state to discriminate against an individual in any way based on an individual's sex, race or national origin in the payment of compensation nor shall they compensate any person in its employ at a rate less than the rates paid to its employees of a different sex, race or national origin for work on a job, the performance of which requires equal or substantially similar skill, effort and responsibility performed under similar working conditions. For the purposes of this subdivision, job description alone shall not determine work that is the same or substantially similar.

3. For the purpose of this section, the term "compensation" shall include but not be limited to: all earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is paid on an annual salary, hourly, biweekly or per diem basis; reimbursement for expenses; health, welfare and retirement benefits; and vacation pay, sick pay, separation or holiday pay, or any other form of remuneration.

4. (a) Where an employee believes he or she is being discriminated against in terms of compensation in violation of this section, such employee may bring an action in any court of competent jurisdiction to recover the equitable and monetary relief described in paragraph (b) of this subdivision.

(b) (1) In any action in which a court or jury finds that an employer has engaged in acts in violation of this section, 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, including an appropriate increase in retirement benefits, 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 section, 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 to ensure an end to unlawful discrimination, including reinstatement to the same or a comparable position for employees in the unclassified service or employees classified as management/confidential or labor; reinstatement with back pay; or reclassification of affected workers.

(3) In any action in which an affected employee or employees prevail in their claims against employers, the court may, in addition to any judgement 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.

(c) An action to recover the damages or equitable relief prescribed in paragraph (b) of this subdivision 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:

(1) the employees; or

(2) the employees and other employees similarly situated.

5. (a) It shall not be a violation of this section for an employer to pay different compensation to employees, where such payments are made pursuant to:

(1) a bona fide seniority or merit system;

1 (2) a bona fide system that measures earnings by quantity or quality
2 of production;

3 (3) a bona fide system based on geographic differentials; or

4 (4) any other bona fide factor other than sex, race or national
5 origin, such as education, training, or experience. Such factor: (A)
6 shall not be based upon or derived from a sex, race, or national origin
7 based differential in compensation; and (B) shall be job-related with
8 respect to the position in question and shall be consistent with busi-
9 ness necessity. Such exception under this paragraph shall not apply when
10 the employee demonstrates (i) that an employer uses a particular employ-
11 ment practice that causes a disparate impact on the basis of sex, race,
12 or national origin, (ii) that an alternative employment practice exists
13 that would serve the same purpose and not produce such differential, and
14 (iii) that the employer has refused to adopt such alternative practice.

15 (b) For the purpose of paragraph (a) of this subdivision, "business
16 necessity" shall be defined as a factor that bears a manifest relation-
17 ship to the employment in question.

18 (c) Nothing set forth in this section shall be construed to impede,
19 infringe or diminish the rights and benefits which accrue to employees
20 through collective bargaining agreements, or otherwise diminish the
21 integrity of the existing collective bargaining relationship.

22 6. Any agreement between the employer and any employee to work for
23 less than the wage to which the employee is entitled under this section
24 shall not be a defense to an action. An employee's previous wage or
25 salary history shall also not be a defense to an action.

26 § 5. Section 296 of the executive law is amended by adding a new
27 subdivision 19-a to read as follows:

28 19-a. It shall be an unlawful discriminatory practice of an employer,
29 labor organization, employment agency or licensing agency, or its
30 employees, agents, or members to seek a salary history from a prospec-
31 tive employee for an interview or as a condition for employment.

32 § 6. This act shall take effect on the ninetieth day after it shall
33 have become a law; provided, however, that effective immediately, the
34 addition, amendment and/or repeal of any rules or regulations necessary
35 for the implementation of the foregoing provisions of this act on its
36 effective date are authorized and directed to be made and completed on
37 or before such effective date.