

1729--A

Cal. No. 94

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. JAFFEE, LIFTON, MILLMAN, GALEF, COLTON, CLARK, ROSENTHAL, WEPRIN, FARRELL, HEVESI, SKOUFIS, ROZIC, SKARTADOS, STECK, STIRPE, SANTABARBARA, RUSSELL, SOLAGES, ROBERTS, OTIS -- Multi-Sponsored by -- M. of A. ABINANTI, ARROYO, AUBRY, BOYLAND, BRENNAN, BUCHWALD, CAHILL, COOK, DINOWITZ, GLICK, GOTTFRIED, HEASTIE, HENNESSEY, HOOPER, JACOBS, LAVINE, LENTOL, LUPARDO, MAGNARELLI, MARKEY, PAULIN, PEOPLES-STOKES, PERRY, RODRIGUEZ, SCHIMEL, SIMOTAS, SWEENEY, TITUS, WEINSTEIN, ZEBROWSKI -- read once and referred to the Committee on Governmental Employees -- advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil service law, in relation to implementing a state policy of fair and equal pay for equivalent value of work

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

1 Section 1. The civil service law is amended by adding a new section 28
2 to read as follows:
3 S 28. POLICY OF THE STATE. 1. IT IS THE POLICY OF NEW YORK STATE AND
4 ALL POLITICAL SUBDIVISIONS THEREOF TO COMPLY WITH THE LETTER AND SPIRIT
5 OF THE FEDERAL "EQUAL PAY ACT OF 1963," PUB. L. 88-38 (29 U.S.C. S 206)
6 WHICH REQUIRES THAT EMPLOYEES OF BOTH SEXES RECEIVE EQUAL PAY FOR EQUAL
7 WORK, THE FEDERAL "CIVIL RIGHTS ACT OF 1964," PUB. L. 88-352 (42 U.S.C.
8 S 2000E-2) WHICH PROHIBITS DISCRIMINATION ON THE BASIS OF SEX, RACE OR
9 NATIONAL ORIGIN IN ALL TERMS OF EMPLOYMENT, ARTICLE FIFTEEN OF THE EXEC-
10 UTIVE LAW AND SECTION FORTY-C OF THE CIVIL RIGHTS LAW, WHICH PROHIBIT
11 DISCRIMINATION ON THE BASIS OF SEX, RACE OR NATIONAL ORIGIN IN ALL TERMS
12 OF EMPLOYMENT. CONSISTENT WITH THESE LAWS, IT IS THE POLICY OF THE STATE
13 TO ENSURE A FAIR, NON-BIASED COMPENSATION STRUCTURE FOR ALL EMPLOYEES IN
14 WHICH SEX, RACE OR NATIONAL ORIGIN IS NOT A CONSIDERATION EITHER DIRECT-
15 LY OR INDIRECTLY IN DETERMINING THE PROPER WAGES FOR A TITLE OR IN
16 DETERMINING THE PAY FOR ANY INDIVIDUAL OR GROUP OF EMPLOYEES. FOR THE

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

LBD02625-05-4

1 PURPOSE OF THIS SECTION, THE TERMS "WAGES" AND "WAGE RATES" SHALL
2 INCLUDE ALL COMPENSATION IN ANY FORM THAT AN EMPLOYER PROVIDES TO
3 EMPLOYEES IN PAYMENT FOR WORK DONE OR SERVICES RENDERED, INCLUDING BUT
4 NOT LIMITED TO BASE PAY, BONUSES, COMMISSIONS, AWARDS, TIPS, OR VARIOUS
5 FORMS OF NON-MONETARY COMPENSATION IF PROVIDED IN LIEU OF OR IN ADDITION
6 TO MONETARY COMPENSATION AND THAT HAVE ECONOMIC VALUE TO AN EMPLOYEE. IN
7 ORDER TO ATTRACT UNUSUAL MERIT AND ABILITY TO THE SERVICE OF THE POLI-
8 TICAL SUBDIVISIONS OF NEW YORK, TO STIMULATE HIGHER EFFICIENCY AMONG THE
9 PERSONNEL, TO PROVIDE SKILLED LEADERSHIP IN ADMINISTRATIVE DEPARTMENTS,
10 TO REWARD MERIT AND TO INSURE TO THE PEOPLE AND THE TAXPAYERS OF THE
11 STATE OF NEW YORK THE HIGHEST RETURN IN SERVICES FOR THE NECESSARY COSTS
12 OF GOVERNMENT, IT IS THE POLICY OF THE STATE TO PROVIDE EQUAL PAY FOR
13 EQUAL AND SIMILAR WORK AND FOR EQUIVALENT VALUE OF WORK, AND REGULAR
14 INCREASES IN PAY IN PROPER PROPORTION TO INCREASE OF ABILITY, INCREASE
15 OF OUTPUT AND INCREASE OF QUALITY OF WORK DEMONSTRATED IN SERVICE. FOR
16 THE PURPOSE OF THIS SECTION, THE TERM "POLITICAL SUBDIVISION" IS
17 CONSISTENT WITH THE DEFINITION IN SECTION ONE HUNDRED OF THE GENERAL
18 MUNICIPAL LAW.

19 2. THE PRINCIPLE OF FAIR AND EQUAL PAY FOR SIMILAR WORK AND FOR EQUIV-
20 ALENT VALUE OF WORK SHALL BE FOLLOWED IN THE CLASSIFICATION AND RECLAS-
21 SIFICATION AND THE ALLOCATION AND REALLOCATION OF POSITIONS AND ALL
22 POSITIONS HAVING THE SAME TITLE SHALL BE ALLOCATED TO THE SAME SALARY
23 GRADE. EQUIVALENT VALUE OF WORK SHALL MEAN TITLES OR POSITION CLASSI-
24 FICATIONS THAT ARE EQUAL WITHIN THE MEANING OF THE "EQUAL PAY ACT OF
25 1963", PUB. L. 88-38 (29 U.S.C. 206(D)), OR TITLES OR POSITION CLASSI-
26 FICATIONS THAT ARE DISSIMILAR BUT WHOSE REQUIREMENTS ARE EQUIVALENT,
27 WHEN VIEWED AS A COMPOSITE OF SKILLS, EFFORT, RESPONSIBILITY AND WORKING
28 CONDITIONS. THE PRINCIPLE OF FAIR AND EQUAL PAY FOR EQUIVALENT VALUE OF
29 WORK REQUIRES THAT CONSIDERATION OF SEX, RACE OR NATIONAL ORIGIN SHALL
30 NOT INFLUENCE DIRECTLY OR INDIRECTLY THE ESTABLISHMENT OF WAGES.

31 IT SHALL NOT BE AN UNLAWFUL EMPLOYMENT PRACTICE FOR AN EMPLOYER TO PAY
32 DIFFERENT WAGE RATES TO EMPLOYEES, WHERE SUCH PAYMENTS ARE MADE PURSUANT
33 TO:

- 34 (A) A BONA FIDE SENIORITY OR MERIT SYSTEM;
35 (B) THE GEOGRAPHIC LOCATION OF THE JOB; OR
36 (C) ANY OTHER BONA FIDE FACTOR OTHER THAN SEX, RACE OR NATIONAL
37 ORIGIN, PROVIDED HOWEVER, THAT SUCH FACTOR DOES NOT RESULT IN DISCRIMI-
38 NATION BASED ON SEX, RACE OR NATIONAL ORIGIN.

39 NOTHING SET FORTH IN THIS SECTION SHALL BE CONSTRUED TO IMPEDE,
40 INFRINGE OR DIMINISH THE RIGHTS AND BENEFITS WHICH ACCRUE TO EMPLOYEES
41 THROUGH COLLECTIVE BARGAINING AGREEMENTS, OR OTHERWISE DIMINISH THE
42 INTEGRITY OF THE EXISTING COLLECTIVE BARGAINING RELATIONSHIP.

43 3. THE COMMISSION SHALL PROMULGATE REGULATIONS SPECIFYING THE METHOD-
44 OLOGY FOR DETERMINING EQUIVALENT VALUE OF WORK BASED ON SKILL, EFFORT,
45 RESPONSIBILITY, AND WORKING CONDITIONS. ANY METHODOLOGY PRESCRIBED BY
46 THE COMMISSION, SUCH AS A SYSTEMATIC POINT EVALUATION SYSTEM, SHALL
47 ENSURE THAT COMPARISON SYSTEMS DO NOT IGNORE OR UNDERVALUE THE WORTH OF
48 JOBS WHERE WOMEN AND MINORITIES ARE DISPROPORTIONATELY REPRESENTED. FOR
49 THE PURPOSES OF THIS SECTION, A SEGREGATED TITLE SHALL CONSTITUTE ANY
50 TITLE IN WHICH THE TOTAL PERCENTAGE OF EMPLOYEES IN THE TITLE OF A
51 PARTICULAR SEX, RACE OR NATIONAL ORIGIN IS EQUAL TO OR GREATER THAN ONE
52 HUNDRED TWENTY PERCENT OF THE PERCENTAGE OF THAT SEX, RACE OR NATIONAL
53 ORIGIN IN THE EMPLOY OF THE POLITICAL SUBDIVISION. THE DEPARTMENT SHALL,
54 UPON THE REQUEST OF ANY LOCAL CIVIL SERVICE ADMINISTRATION, RENDER
55 SERVICE OR TECHNICAL ADVICE AND ASSISTANCE RELATIVE TO THE POSITION
56 CLASSIFICATION AND PAY EQUITY COMPENSATION ASSESSMENT OF OFFICES AND

1 EMPLOYMENTS UNDER THE JURISDICTION OF SUCH LOCAL CIVIL SERVICE ADMINIS-
2 TRATION PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-THREE OF THIS
3 TITLE.

4 4. BY OCTOBER FIRST, TWO THOUSAND FIFTEEN, AND EVERY FIVE YEARS THERE-
5 AFTER, ALL LOCAL CIVIL SERVICE ADMINISTRATIONS PURSUANT TO SECTION
6 FIFTEEN OF THIS TITLE, SHALL SUBMIT TO THE PRESIDENT OF THE COMMISSION A
7 LIST SHOWING, BY NEGOTIATING UNIT AND FOR MANAGEMENT/CONFIDENTIAL
8 EMPLOYEES, THOSE SEGREGATED TITLES FOR WHICH A DISPARITY EXISTS BASED ON
9 THE EQUIVALENT VALUE OF THE WORK. THE PRESIDENT OF THE COMMISSION SHALL
10 COMPILE THE LISTS PROVIDED TO THEM BY THE LOCAL CIVIL SERVICE ADMINIS-
11 TRATIONS AND, BY JANUARY FIRST, TWO THOUSAND SIXTEEN, AND EVERY FIVE
12 YEARS THEREAFTER, SUBMIT TO THE LEGISLATURE AND THE GOVERNOR'S OFFICE OF
13 EMPLOYEE RELATIONS, A LIST SHOWING, BY NEGOTIATING UNIT AND FOR
14 MANAGEMENT/CONFIDENTIAL EMPLOYEES, THOSE SEGREGATED TITLES FOR WHICH A
15 DISPARITY EXISTS BASED ON THE EQUIVALENT VALUE OF THE WORK AS REPORTED
16 BY THE LOCAL CIVIL SERVICE ADMINISTRATIONS.

17 5. WHEN A LOCAL CIVIL SERVICE ADMINISTRATION CREATES NEW TITLES OR,
18 BECAUSE OF MERGERS OR TAKEOVERS, TRANSFERS WORKFORCE FROM ONE TITLE TO
19 ANOTHER TITLE, IT SHALL RE-SUBMIT TO THE PRESIDENT OF THE COMMISSION A
20 LIST OF ANY SEGREGATED TITLES FOR WHICH A DISPARITY EXISTS BASED ON THE
21 EQUIVALENT VALUE OF WORK, WHO WILL THEN SUBMIT THE LIST TO THE LEGISLA-
22 TURE.

23 6. UPON THE DISCOVERY OF THE EXISTENCE OF SEGREGATED TITLES FOR WHICH
24 A DISPARITY EXISTS BASED ON THE EQUIVALENT VALUE OF WORK, THE EMPLOYER
25 AND THE LOCAL CIVIL SERVICE ADMINISTRATION SHALL CORRECT THE DISPARITY.
26 AN EMPLOYER WHO IS IN VIOLATION OF THIS SECTION, AS DETERMINED BY THE
27 COMMISSION, SHALL NOT, IN ORDER TO COMPLY WITH THIS SECTION, REDUCE THE
28 WAGES OF ANY EMPLOYEE OR REDUCE THE WAGE RATE FOR ANY POSITION.

29 S 2. This act shall take effect immediately.