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

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:

Section 1. The civil service law is amended by adding a new section 28 to read as follows:

S 28. POLICY OF THE STATE. 1. IT IS THE POLICY OF NEW YORK STATE AND ALL POLITICAL SUBDIVISIONS THEREOF TO COMPLY WITH THE LETTER AND SPIRIT OF THE FEDERAL "EQUAL PAY ACT OF 1963," PUB. L. 88-38 (29 U.S.C. S 206) WHICH REQUIRES THAT EMPLOYEES OF BOTH SEXES RECEIVE EQUAL PAY FOR EQUAL WORK, THE FEDERAL "CIVIL RIGHTS ACT OF 1964," PUB. L. 88-352 (42 U.S.C. S 2000E-2) WHICH PROHIBITS DISCRIMINATION ON THE BASIS OF SEX, RACE OR NATIONAL ORIGIN IN ALL TERMS OF EMPLOYMENT, ARTICLE FIFTEEN OF THE EXECUTIVE LAW AND SECTION FORTY-C OF THE CIVIL RIGHTS LAW, WHICH PROHIBIT DISCRIMINATION ON THE BASIS OF SEX, RACE OR NATIONAL ORIGIN IN ALL TERMS OF EMPLOYMENT. CONSISTENT WITH THESE LAWS, IT IS THE POLICY OF THE STATE TO ENSURE A FAIR, NON-BIASED COMPENSATION STRUCTURE FOR ALL EMPLOYEES IN WHICH SEX, RACE OR NATIONAL ORIGIN IS NOT A CONSIDERATION EITHER DIRECTLY OR INDIRECTLY IN DETERMINING THE PROPER WAGES FOR A TITLE OR IN 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

PURPOSE OF THIS SECTION, THE TERMS "WAGES" AND "WAGE RATES" SHALL INCLUDE ALL COMPENSATION IN ANY FORM THAT 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. IN ORDER TO ATTRACT UNUSUAL MERIT AND ABILITY TO THE SERVICE OF THE POLITICAL SUBDIVISIONS OF NEW YORK, TO STIMULATE HIGHER EFFICIENCY AMONG THE PERSONNEL, TO PROVIDE SKILLED LEADERSHIP IN ADMINISTRATIVE DEPARTMENTS, TO REWARD MERIT AND TO INSURE TO THE PEOPLE AND THE TAXPAYERS OF THE STATE OF NEW YORK THE HIGHEST RETURN IN SERVICES FOR THE NECESSARY COSTS OF GOVERNMENT, IT IS THE POLICY OF THE STATE TO PROVIDE EQUAL PAY FOR EQUAL AND SIMILAR WORK AND FOR EQUIVALENT VALUE OF WORK, AND REGULAR INCREASES IN PAY IN PROPER PROPORTION TO INCREASE OF ABILITY, INCREASE OF OUTPUT AND INCREASE OF QUALITY OF WORK DEMONSTRATED IN SERVICE. FOR THE PURPOSE OF THIS SECTION, THE TERM "POLITICAL SUBDIVISION" IS CONSISTENT WITH THE DEFINITION IN SECTION ONE HUNDRED OF THE GENERAL MUNICIPAL LAW.

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

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:

(A) A BONA FIDE SENIORITY OR MERIT SYSTEM;

(B) THE GEOGRAPHIC LOCATION OF THE JOB; OR

(C) ANY OTHER BONA FIDE FACTOR OTHER THAN SEX, RACE OR NATIONAL ORIGIN, PROVIDED HOWEVER, THAT SUCH FACTOR DOES NOT RESULT IN DISCRIMINATION BASED ON SEX, RACE OR NATIONAL ORIGIN.

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

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

EMPLOYMENTS UNDER THE JURISDICTION OF SUCH LOCAL CIVIL SERVICE ADMINISTRATION PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-THREE OF THIS TITLE.

4. BY OCTOBER FIRST, TWO THOUSAND FIFTEEN, AND EVERY FIVE YEARS THEREAFTER, ALL LOCAL CIVIL SERVICE ADMINISTRATIONS PURSUANT TO SECTION FIFTEEN OF THIS TITLE, SHALL SUBMIT TO THE PRESIDENT OF THE COMMISSION A LIST SHOWING, BY NEGOTIATING UNIT AND FOR MANAGEMENT/CONFIDENTIAL EMPLOYEES, THOSE SEGREGATED TITLES FOR WHICH A DISPARITY EXISTS BASED ON THE EQUIVALENT VALUE OF THE WORK. THE PRESIDENT OF THE COMMISSION SHALL COMPILE THE LISTS PROVIDED TO THEM BY THE LOCAL CIVIL SERVICE ADMINISTRATIONS AND, BY JANUARY FIRST, TWO THOUSAND SIXTEEN, AND EVERY FIVE YEARS THEREAFTER, SUBMIT TO THE LEGISLATURE AND THE GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS, A LIST SHOWING, BY NEGOTIATING UNIT AND FOR MANAGEMENT/CONFIDENTIAL EMPLOYEES, THOSE SEGREGATED TITLES FOR WHICH A DISPARITY EXISTS BASED ON THE EQUIVALENT VALUE OF THE WORK AS REPORTED BY THE LOCAL CIVIL SERVICE ADMINISTRATIONS.

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

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

S 2. This act shall take effect immediately.