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

7238

I N S E N A T E

April 11, 2016

Introduced by Sen. SANDERS -- 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 demonstrating the permissibility of a differential in rate of pay

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

Section 1. Section 194 of the labor law is amended by adding three new subdivisions 5, 6 and 7 to read as follows:

5. AN EMPLOYER ASSERTING THAT DIFFERENTIAL WAGES ARE PAID FOR A PERMISSIBLE REASON UNDER SUBDIVISION ONE OF THIS SECTION SHALL DEMONSTRATE THAT SUCH REASON:

A. DOES NOT PERPETUATE A SEX-BASED DIFFERENTIAL IN COMPENSATION; AND

B. IS JOB-RELATED WITH RESPECT TO THE POSITION IN QUESTION AND IS CONSISTENT WITH BUSINESS NECESSITY. SUCH EXCEPTION UNDER THIS PARAGRAPH SHALL NOT APPLY WHEN THE EMPLOYEE DEMONSTRATES:

(I) THAT AN EMPLOYER USES A PARTICULAR EMPLOYMENT PRACTICE THAT CAUSES A DISPARATE IMPACT ON THE BASIS OF SEX;

(II) THAT AN ALTERNATIVE EMPLOYMENT PRACTICE EXISTS THAT WOULD SERVE THE SAME BUSINESS PURPOSE AND NOT PRODUCE SUCH DIFFERENTIAL; AND

(III) THAT THE EMPLOYER HAS REFUSED TO ADOPT SUCH ALTERNATIVE PRACTICE.

6. EVERY EMPLOYER SUBJECT TO THIS SECTION SHALL POST IN A CONSPICUOUS PLACE OR PLACES ON HIS OR HER PREMISES A NOTICE TO BE PREPARED OR APPROVED BY THE COMMISSIONER, WHICH SHALL SET FORTH EXCERPTS OF THIS SECTION AND ANY OTHER RELEVANT INFORMATION WHICH THE COMMISSIONER DEEMS NECESSARY TO EXPLAIN THIS SECTION. ANY EMPLOYER REFUSING TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL BE PUNISHED BY A FINE OF NOT LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS.

7. A. ANY EMPLOYEE OR FORMER EMPLOYEE, FOR AND ON BEHALF OF HIMSELF OR HERSELF AND OTHER SIMILARLY SITUATED EMPLOYEES, OR ANY ORGANIZATION REPRESENTING SUCH AN EMPLOYEE OR FORMER EMPLOYEE AGGRIEVED BY A VIOLATION OF THIS SECTION MAY FILE A CIVIL ACTION IN ANY COURT OF COMPETENT JURISDICTION TO OBTAIN RELIEF.

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

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B. AN AGGRIEVED PARTY SHALL BE ENTITLED TO RECOVER ANY UNPAID WAGES AND/OR BENEFITS, COMPENSATORY DAMAGES, AND LIQUIDATED DAMAGES IN AN AMOUNT UP TO THREE TIMES THE AMOUNT OF UNPAID WAGES AND/OR BENEFITS OWED, EXCLUSIVE OF INTEREST, AS WELL AS AN AWARD OF APPROPRIATE EQUITABLE RELIEF, INCLUDING REINSTATEMENT OF EMPLOYMENT, FRINGE BENEFITS AND SENIORITY RIGHTS, AND REASONABLE ATTORNEYS' FEES, INCLUDING EXPERT FEES AND OTHER LITIGATION EXPENSES.

C. THE FILING OF A CIVIL ACTION UNDER THIS SECTION SHALL NOT PRECLUDE THE COMMISSIONER FROM INVESTIGATING THE MATTER AND/OR REFERRING THE MATTER TO THE ATTORNEY GENERAL.

D. AN EMPLOYER WHO VIOLATES THIS SECTION, IN ADDITION TO ANY OTHER RELIEF TO WHICH ANY DEPARTMENT OR A COMPLAINING PARTY MAY BE ENTITLED FOR SUCH A VIOLATION, SHALL BE LIABLE FOR A CIVIL PENALTY IN AN AMOUNT UP TO THREE HUNDRED PERCENT OF THE TOTAL AMOUNT OF THE WAGES FOUND TO BE DUE, EXCLUSIVE OF INTEREST, WHICH SHALL BE PAYABLE DIRECTLY TO THE COMPLAINING PARTY. THE ORDER MAY ALSO DIRECT PAYMENT OF REASONABLE ATTORNEYS' FEES AND COSTS TO THE COMPLAINING PARTY. THE ORDER MAY FURTHER DIRECT THAT AN ADMINISTRATIVE PENALTY BE PAID TO THE DEPARTMENT IN THE AMOUNT UP TO ONE HUNDRED PERCENT OF THE TOTAL AMOUNT OF WAGES FOUND TO BE DUE.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.