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

2707--A

2015-2016 Regular Sessions

I N S E N A T E

January 28, 2015

Introduced by Sens. KRUEGER, ADDABBO, BRESLIN, DIAZ, GIANARIS, HAMILTON, HASSELL-THOMPSON, HOYLMAN, KENNEDY, MONTGOMERY, PANEPINTO, PARKER, PERKINS, RIVERA, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. REMEDIES AND ENFORCEMENT.
756. 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;

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

LBD03616-05-5

(2) THE EXISTENCE OF SUCH WAGE DIFFERENTIALS:
(A) DEPRESSES WAGES AND LIVING STANDARDS FOR EMPLOYEES NECESSARY FOR THEIR HEALTH AND EFFICIENCY;
(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 FOUR 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 "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, BONUS-

ES, 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 BONA FIDE SYSTEM THAT MEASURES EARNINGS BY QUANTITY OR QUALITY OF PRODUCTION;

(3) A BONA FIDE SYSTEM BASED ON GEOGRAPHIC DIFFERENTIALS; OR

(4) A BONA FIDE FACTOR OTHER THAN SEX, RACE OR NATIONAL ORIGIN, SUCH AS EDUCATION, TRAINING, OR EXPERIENCE. SUCH FACTOR: (A) SHALL NOT BE BASED UPON OR DERIVED FROM A SEX, RACE OR NATIONAL ORIGIN BASED DIFFERENTIAL IN COMPENSATION AND (B) SHALL BE JOB-RELATED WITH RESPECT TO THE POSITION IN QUESTION AND SHALL BE 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, RACE OR NATIONAL ORIGIN, (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.

(C) FOR THE PURPOSE OF SUBDIVISION (B) OF THIS SECTION, "BUSINESS NECESSITY" SHALL BE DEFINED AS A FACTOR THAT BEARS A MANIFEST RELATIONSHIP TO THE EMPLOYMENT IN QUESTION.

(D) 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.

(E) 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.

(F) AN AGREEMENT BY ANY EMPLOYEE TO WORK FOR LESS THAN THE COMPENSATION TO WHICH THE EMPLOYEE IS ENTITLED UNDER THIS ARTICLE SHALL NOT BE A BAR TO ANY ACTION TO WHICH THE EMPLOYEE WOULD OTHERWISE BE ENTITLED TO ENFORCE THE PROVISIONS OF THIS ARTICLE.

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

(H) (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 FORMAL-

LY 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. REMEDIES AND ENFORCEMENT. (A) (1) THE DEPARTMENT SHALL RECEIVE, INVESTIGATE, AND ATTEMPT TO RESOLVE COMPLAINTS OF VIOLATIONS OF THIS ARTICLE.

(2) 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 (B) OF THIS SECTION.

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

(B) (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 MAY, 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.

(C) AN ACTION TO RECOVER THE DAMAGES OR EQUITABLE RELIEF PRESCRIBED IN SUBDIVISION (B) 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:

(1) THE EMPLOYEES; OR

(2) THE EMPLOYEES AND OTHER EMPLOYEES SIMILARLY SITUATED.

S 756. REGULATIONS. THE DEPARTMENT SHALL PRESCRIBE SUCH REGULATIONS AS ARE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

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