

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:

1 Section 1. Section 194 of the labor law is amended by adding three new
2 subdivisions 5, 6 and 7 to read as follows:
3 5. AN EMPLOYER ASSERTING THAT DIFFERENTIAL WAGES ARE PAID FOR A
4 PERMISSIBLE REASON UNDER SUBDIVISION ONE OF THIS SECTION SHALL DEMON-
5 STRATE THAT SUCH REASON:
6 A. DOES NOT PERPETUATE A SEX-BASED DIFFERENTIAL IN COMPENSATION; AND
7 B. IS JOB-RELATED WITH RESPECT TO THE POSITION IN QUESTION AND IS
8 CONSISTENT WITH BUSINESS NECESSITY. SUCH EXCEPTION UNDER THIS PARAGRAPH
9 SHALL NOT APPLY WHEN THE EMPLOYEE DEMONSTRATES:
10 (I) THAT AN EMPLOYER USES A PARTICULAR EMPLOYMENT PRACTICE THAT CAUSES
11 A DISPARATE IMPACT ON THE BASIS OF SEX;
12 (II) THAT AN ALTERNATIVE EMPLOYMENT PRACTICE EXISTS THAT WOULD SERVE
13 THE SAME BUSINESS PURPOSE AND NOT PRODUCE SUCH DIFFERENTIAL; AND
14 (III) THAT THE EMPLOYER HAS REFUSED TO ADOPT SUCH ALTERNATIVE PRAC-
15 TICE.
16 6. EVERY EMPLOYER SUBJECT TO THIS SECTION SHALL POST IN A CONSPICUOUS
17 PLACE OR PLACES ON HIS OR HER PREMISES A NOTICE TO BE PREPARED OR
18 APPROVED BY THE COMMISSIONER, WHICH SHALL SET FORTH EXCERPTS OF THIS
19 SECTION AND ANY OTHER RELEVANT INFORMATION WHICH THE COMMISSIONER DEEMS
20 NECESSARY TO EXPLAIN THIS SECTION. ANY EMPLOYER REFUSING TO COMPLY WITH
21 THE PROVISIONS OF THIS SECTION SHALL BE PUNISHED BY A FINE OF NOT LESS
22 THAN ONE HUNDRED DOLLARS NOR MORE THAN FIVE HUNDRED DOLLARS.
23 7. A. ANY EMPLOYEE OR FORMER EMPLOYEE, FOR AND ON BEHALF OF HIMSELF OR
24 HERSELF AND OTHER SIMILARLY SITUATED EMPLOYEES, OR ANY ORGANIZATION
25 REPRESENTING SUCH AN EMPLOYEE OR FORMER EMPLOYEE AGGRIEVED BY A
26 VIOLATION OF THIS SECTION MAY FILE A CIVIL ACTION IN ANY COURT OF COMPE-
27 TENT JURISDICTION TO OBTAIN RELIEF.

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

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

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

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

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