STATE OF NEW YORK

1047--B

Cal. No. 176

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. SIMOTAS, COLTON, SEAWRIGHT, BLAKE, OTIS, ORTIZ, WALLACE, BRONSON, PERRY, CRUZ, WRIGHT, FERNANDEZ -- read once and referred to the Committee on Governmental Employees -- reported and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil service law, in relation to a fair, non-biased compensation structure

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 115 of the civil service law, as added by chapter 790 of the laws of 1958, is amended to read as follows:

§ 115. Policy of the state. **1.** In order to attract unusual merit and ability to the service of the state of New York **and all its political subdivisions**, 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 hereby declared to be the policy of the state [~~to provide equal pay for equal work;~~] **and all its political subdivisions thereof, consistent with the federal Equal Pay Act of 1963 (29 U.S.C. § 206), the federal Civil Rights Act (42 U.S.C. § 2000e-2), article fifteen of the executive law, and section forty-c of the civil rights law, to ensure a fair, non-biased compensation structure for all employees in which status within one or more protected class or classes is not considered either directly or indirectly in determining the proper compensation for a title or in determining the pay for any individual or group of employees, to ensure that no employee with status within one or more protected class or classes shall be paid a wage at a rate less than the rate at**

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

LBD01407-07-9

which an employee without status within the same protected class or classes in the same establishment is paid for similar work or substantially similar work and to provide regular increases in pay in proper proportion to increase of ability, increase of output and increase of quality of work demonstrated in service.

2. For the purpose of this section:

(a) the term "protected class" includes age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, and any employee protected from discrimination pursuant to paragraphs a, b, and c of subdivision one of section two hundred ninety-six of the executive law, and any intern protected from discrimination pursuant to section two hundred ninety-six-c of the executive law.

(b) the term "compensation" shall include but not be limited to: all earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is paid on an annual salary, hourly, biweekly or per diem basis; reimbursement for expenses; health, welfare and retirement benefits; and vacation pay, sick pay, separation or holiday pay, or any other form of remuneration.

(c) employees shall be deemed to work in the same establishment if the employees work for the same employer at workplaces located in the same geographical region, no larger than a county, taking into account population distribution, economic activity, and/or the presence of municipalities.

3. (a) Where an employee believes he or she is being discriminated against in terms of compensation in violation of this section, such employee may bring an action in any court of competent jurisdiction to recover the equitable and monetary relief described in paragraph (b) of this subdivision.

(b) (1) In any action in which a court or jury finds that an employer has engaged in acts in violation of this section, 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, including an appropriate increase in retirement benefits, 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 section, 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 to ensure an end to unlawful discrimination, including reinstatement to the same or a comparable position for employees in the unclassified service or employees classified as management/confidential or labor; reinstatement with back pay; or reclassification of affected workers.

(3) In any action in which an affected employee or employees prevail in their claims against employers, the court may, in addition to any judgement 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 paragraph (b) of this subdivision 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.

4. (a) It shall not be a violation of this section for an employer to pay different compensation 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) any other bona fide factor other than status within one or more protected class or classes, such as education, training, or experience. Such factor: (A) shall not be based upon or derived from a differential in compensation based on status within one or more protected class or classes; 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 status within one or more protected class or classes, (ii) that an alternative employment practice exists that would serve the same purpose and not produce such differential, and (iii) that the employer has refused to adopt such alternative practice.

(b) For the purpose of paragraph (a) of this subdivision, "business necessity" shall be defined as a factor that bears a manifest relationship to the employment in question.

(c) 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.

§ 2. This act shall take effect immediately.