STATE OF NEW YORK

1136

2019-2020 Regular Sessions

IN SENATE

January 11, 2019

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the executive law, in relation to prohibiting employers from seeking salary history from prospective employees

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

Section 1. Legislative intent. The legislature hereby finds that New York should lead the nation in preventing wage discrimination.

The wage gap between men and women is one of the oldest and most persistent effects of inequality between the sexes in the United States.

The 1963 Equal Pay Act and the 1964 Civil Rights Act in the United States established the legal right to equal pay for equal work and equal opportunity. Yet half a century later, women are still subjected to wage gaps and paid less then men.

The concept of comparable worth attacks the problem of gender-based wage discrimination by mandating that jobs characterized by similar levels of education, skill, effort, responsibilities, and working conditions be compensated at similar wage levels regardless of the gender of the worker holding the job.

The goal of pay equity is to raise the wages for undervalued jobs held predominantly by women. Today, women make only 77 cents per every dollar earned by a man for a comparable job, a gender wage gap of 23 percent.

This translates into thousands of dollars of lost wages each year for each female worker, money that helps them feed their families, save for a college education and afford decent and safe housing.

Pay disparities affect women of all ages, races, and education levels, but are more pronounced for women of color. Minority women make as little as 54 cents per dollar for a comparable job held by a man.

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

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Female-dominated jobs pay twenty to thirty percent less than male-dominated jobs classified as comparable in worth and more than one half of all women work in jobs that are over seventy percent female.

Women are more likely to enter poverty in old age for several reasons: A lifetime of lower wages means women have less income to save for retirement, and less income that counts in their Social Security or pension benefit formula.

The current life expectancy for women means they will, on an average of three years, outlive men. Yet they will have to stretch their retirement savings, which are less to begin with, over a longer period of time.

The existence of pay inequity is a manifestation of deep-seated sex discrimination that prevents both equality of pay for women and equality of opportunity for both sexes.

More women in the United States are obtaining college degrees and increasing their participation in the labor force and family-friendly legislation, including the Equal Pay Act, Family and Medical Leave Act, and Pregnancy Discrimination Act, and policies such as flex time and telecommuting, have increased options to create a win-win situation for women and their employers.

Despite the progress, women continue to suffer the consequences of inequitable pay differentials: in 2010, the average college-educated woman working full-time earned $47,000 a year compared to $64,000 for a college-educated man.

During 2012, median weekly earnings for female full-time workers were $691, compared with $854 per week for men, a gender wage gap of 19 percent.

Fair pay strengthens the security of families and eases future retirement costs while also strengthening the American economy. In order to achieve fair pay, policymakers must enact laws that prevent gender based wage discrimination from when women enter the labor force.

In order to do so, it is necessary to prevent employers to base a woman's pay based on her previous pay history. Because the pay is already based on gender discrimination, allowing pay history to be requested by employers is equivalent to maintaining a standard of lower pay for women performing similar jobs as men. This practice of asking for pay history must be outlawed.

§ 2. Section 296 of the executive law is amended by adding a new subdivision 19-a to read as follows:

19-a. (a) It shall be an unlawful discriminatory practice of any employer, prospective employer, labor organization, employment agency or licensing agency, or employees or agents thereof, to seek a salary history from a prospective employee for an interview or as a condition for employment.

(b) An employee or prospective employee may provide a salary history only for the purposes of negotiating an advanced salary.

(c) A prospective employer may only confirm a salary history after obtaining written authorization by the prospective employee and such prospective employer must preserve proof of that authorization.

§ 3. The department of labor, in conjunction with the New York state division of human rights, shall (a) establish a public awareness campaign, available on their respective websites, informing employers in the state that it is illegal to seek salary information from prospective employees; and (b) collect complaints of violations of section two hundred ninety-six of the executive law through their toll free telephone number and provide data regarding the number of complaints and the

regions of the state where the complaints originate in an annual required reporting on labor and human rights law violations.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law.