

# STATE OF NEW YORK

456

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

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:

1 Section 1. Section 115 of the civil service law, as added by chapter  
2 790 of the laws of 1958, is amended to read as follows:

3 § 115. Policy of the state. 1. In order to attract unusual merit and  
4 ability to the service of the state of New York and all its political  
5 subdivisions, to stimulate higher efficiency among the personnel, to  
6 provide skilled leadership in administrative departments, to reward  
7 merit and to insure to the people and the taxpayers of the state of New  
8 York the highest return in services for the necessary costs of govern-  
9 ment, it is hereby declared to be the policy of the state [~~to provide~~  
10 ~~equal pay for equal work,~~] and all its political subdivisions thereof,  
11 consistent with the federal Equal Pay Act of 1963 (29 U.S.C. § 206), the  
12 federal Civil Rights Act (42 U.S.C. § 2000e-2), article fifteen of the  
13 executive law, and section forty-c of the civil rights law, to ensure a  
14 fair, non-biased compensation structure for all employees in which sex,  
15 race, or national origin is not considered either directly or indirectly  
16 in determining the proper compensation for a title or in determining the  
17 pay for any individual or group of employees, and to provide regular  
18 increases in pay in proper proportion to increase of ability, increase  
19 of output and increase of quality of work demonstrated in service.

20 2. For the purpose of this section, the term "compensation" shall  
21 include but not be limited to: all earnings of an employee for labor or  
22 services rendered, regardless of whether the amount of earnings is paid  
23 on an annual salary, hourly, biweekly or per diem basis; reimbursement

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

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1 for expenses; health, welfare and retirement benefits; and vacation pay,  
2 sick pay, separation or holiday pay, or any other form of remuneration.

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

8 (b) (1) In any action in which a court or jury finds that an employer  
9 has engaged in acts in violation of this section, the court or jury  
10 shall award to any affected employee or employees monetary relief,  
11 including back pay in an amount equal to the difference between the  
12 employee's actual earnings and what the employee would have earned but  
13 for the employer's unlawful practices, including an appropriate increase  
14 in retirement benefits, and an additional amount in compensatory and  
15 punitive damages, as appropriate.

16 (2) In any action in which a court or jury finds that an employer has  
17 engaged in acts in violation of this section, the court shall enjoin the  
18 employer from continuing to discriminate against affected employees and  
19 shall direct the employer to comply with the provisions of this article;  
20 and may order the employer to take such additional affirmative steps as  
21 are necessary to ensure an end to unlawful discrimination, including  
22 reinstatement to the same or a comparable position for employees in the  
23 unclassified service or employees classified as management/confidential  
24 or labor; reinstatement with back pay; or reclassification of affected  
25 workers.

26 (3) In any action in which an affected employee or employees prevail  
27 in their claims against employers, the court may, in addition to any  
28 judgement awarded to the plaintiffs, allow a reasonable attorney's fee,  
29 reasonable expert witness fees, and other costs of the action to be paid  
30 by the employer.

31 (c) An action to recover the damages or equitable relief prescribed in  
32 paragraph (b) of this subdivision may be maintained against any employer  
33 in any court of competent jurisdiction by any one or more employees or  
34 their representative for or on behalf of:

35 (1) the employees; or

36 (2) the employees and other employees similarly situated.

37 4. (a) It shall not be a violation of this section for an employer to  
38 pay different compensation to employees, where such payments are made  
39 pursuant to:

40 (1) a bona fide seniority or merit system;

41 (2) a bona fide system that measures earnings by quantity or quality  
42 of production;

43 (3) a bona fide system based on geographic differentials; or

44 (4) any other bona fide factor other than sex, race or national  
45 origin, such as education, training, or experience. Such factor: (A)  
46 shall not be based upon or derived from a sex, race, or national origin  
47 based differential in compensation; and (B) shall be job-related with  
48 respect to the position in question and shall be consistent with busi-  
49 ness necessity. Such exception under this paragraph shall not apply when  
50 the employee demonstrates (i) that an employer uses a particular employ-  
51 ment practice that causes a disparate impact on the basis of sex, race,  
52 or national origin, (ii) that an alternative employment practice exists  
53 that would serve the same purpose and not produce such differential, and  
54 (iii) that the employer has refused to adopt such alternative practice.

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

4     (c) Nothing set forth in this section shall be construed to impede,  
5     infringe or diminish the rights and benefits which accrue to employees  
6     through collective bargaining agreements, or otherwise diminish the  
7     integrity of the existing collective bargaining relationship.

8     § 2. This act shall take effect immediately.