

# STATE OF NEW YORK

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456--A

Cal. No. 521

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

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Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in 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:

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  
15 status within a protected class is not considered either directly or  
16 indirectly in determining the proper compensation for a title or in  
17 determining the pay for any individual or group of employees, and to  
18 provide regular increases in pay in proper proportion to increase of  
19 ability, increase of output and increase of quality of work demonstrated  
20 in service.

21 2. For the purpose of this section, the term:

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

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1 (a) "protected class" shall mean any group of individuals that are  
2 protected against an unlawful discriminatory practice by an employer  
3 pursuant to section two hundred ninety-six of the executive law.

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

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

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

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

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

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

42 (1) the employees; or

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

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

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

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

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

51 (4) any other bona fide factor other than status within a protected  
52 class, such as education, training, or experience. Such factor: (A)  
53 shall not be based upon or derived from a differential in compensation  
54 based on status within a protected class; and (B) shall be job-related  
55 with respect to the position in question and shall be consistent with  
56 business necessity. Such exception under this paragraph shall not apply

1 when the employee demonstrates (i) that an employer uses a particular  
2 employment practice that causes a disparate impact on the basis of  
3 status within a protected class, (ii) that an alternative employment  
4 practice exists that would serve the same purpose and not produce such  
5 differential, and (iii) that the employer has refused to adopt such  
6 alternative practice.

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

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

14 § 2. This act shall take effect immediately.