

# STATE OF NEW YORK

456--B

Cal. No. 521

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 -- 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 -- again 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 one or more protected class or classes is not considered  
16 either directly or indirectly in determining the proper compensation for  
17 a title or in determining the pay for any individual or group of employ-  
18 ees, to ensure that no employee with status within one or more protected  
19 class or classes shall be paid a wage at a rate less than the rate at  
20 which an employee without status within the same protected class or

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

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1 classes in the same establishment is paid for similar work or substan-  
2 tially similar work and to provide regular increases in pay in proper  
3 proportion to increase of ability, increase of output and increase of  
4 quality of work demonstrated in service.

5 2. For the purpose of this section:

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

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

20 (c) employees shall be deemed to work in the same establishment if the  
21 employees work for the same employer at workplaces located in the same  
22 geographical region, no larger than a county, taking into account popu-  
23 lation distribution, economic activity, and/or the presence of munici-  
24 palities.

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

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

38 (2) In any action in which a court or jury finds that an employer has  
39 engaged in acts in violation of this section, the court shall enjoin the  
40 employer from continuing to discriminate against affected employees and  
41 shall direct the employer to comply with the provisions of this article;  
42 and may order the employer to take such additional affirmative steps as  
43 are necessary to ensure an end to unlawful discrimination, including  
44 reinstatement to the same or a comparable position for employees in the  
45 unclassified service or employees classified as management/confidential  
46 or labor; reinstatement with back pay; or reclassification of affected  
47 workers.

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

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

1 (1) the employees; or

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

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

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

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

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

10 (4) any other bona fide factor other than status within one or more  
11 protected class or classes, such as education, training, or experience.

12 Such factor: (A) shall not be based upon or derived from a differential  
13 in compensation based on status within one or more protected class or  
14 classes; and (B) shall be job-related with respect to the position in  
15 question and shall be consistent with business necessity. Such exception  
16 under this paragraph shall not apply when the employee demonstrates (i)  
17 that an employer uses a particular employment practice that causes a  
18 disparate impact on the basis of status within one or more protected  
19 class or classes, (ii) that an alternative employment practice exists  
20 that would serve the same purpose and not produce such differential, and  
21 (iii) that the employer has refused to adopt such alternative practice.

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

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

29 § 2. This act shall take effect immediately.