STATE OF NEW YORK

5173

2019-2020 Regular Sessions

IN SENATE

April 12, 2019

Introduced by Sen. BIAGGI -- 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 wage or salary history inquiries; and to amend the labor law, in relation to the prohibition of a differential rate of pay on the basis of protected class status

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

Section 1. Subdivision 1 of section 296 of the executive law is amended by adding a new paragraph (h) to read as follows:

(h) (i) For an employer or employment agency in writing or otherwise, to rely on, or inquire about, the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant. Nothing in this subdivision shall prevent an applicant from voluntarily and without prompting disclosing salary history information to a prospective employer. If an applicant volunteers salary history information, nothing shall prohibit that employer from considering or relying on that information. Nothing in this subdivision shall prohibit an employer, without inquiring about salary history, from engaging in discussion with the applicant about their expectations with respect to salary, benefits, and other compensation.

(ii) For the purposes of this paragraph, "employer" shall include but not be limited to any person, corporation, limited liability company, association, labor organization, or entity employing any individual in any occupation, industry, trade, business or service. For the purposes of this paragraph, the term "employer" shall include the state, any political subdivision thereof, any public authority or any other governmental entity or instrumentality thereof, and any person, corporation, limited liability company, association or entity acting as an employment

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

LBD10298-03-9

agent, recruiter, or otherwise connecting prospective employees with employers.

§ 2. The section heading and subdivision 1 of section 194 of the labor law, the section heading as added by chapter 548 of the laws of 1966 and subdivision 1 as amended by chapter 362 of the laws of 2015, are amended to read as follows:

Differential in rate of pay because of [~~sex~~] protected class status prohibited. 1. "Protected class" includes the list of categories protected from discrimination pursuant to paragraph (a) of subdivision one of section two hundred ninety-six of the executive law.

1-a. No employee who is a member of a protected class shall be paid a wage at a rate less than the rate at which an employee [~~of the opposite sex~~] who is not a member of the protected class in the same establishment is paid for [~~equal work on a job the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions~~] substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, except where payment is made pursuant to a differential based on:

a. a seniority system;

b. a merit system;

c. a system which measures earnings by quantity or quality of production; or

d. a bona fide factor other than [~~sex~~] the protected class status, such as education, training, or experience. Such factor: (i) shall not be based upon [~~or derived from~~] a [~~sex-based~~] differential in compensation that was originally derived from a protected class status and (ii) 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 (A) that an employer uses a particular employment practice that causes a disparate impact on the basis of [~~sex~~] protected class status, (B) that an alternative employment practice exists that would serve the same business purpose and not produce such differential, and (C) that the employer has refused to adopt such alternative practice.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.