

# STATE OF NEW YORK

5248

2019-2020 Regular Sessions

## IN SENATE

April 18, 2019

Introduced by Sen. BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT 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:

1 Section 1. The section heading and subdivision 1 of section 194 of the  
2 labor law, the section heading as added by chapter 548 of the laws of  
3 1966 and subdivision 1 as amended by chapter 362 of the laws of 2015,  
4 are amended to read as follows:

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

9 1-a. No employee who is a member of a protected class shall be paid a  
10 wage at a rate less than the rate at which an employee [~~of the opposite~~  
11 ~~sex~~] who is not a member of the protected class in the same establish-  
12 ment is paid for [~~equal work on a job the performance of which requires~~  
13 ~~equal skill, effort and responsibility, and which is performed under~~  
14 ~~similar working conditions~~] substantially similar work, when viewed as a  
15 composite of skill, effort, and responsibility, and performed under  
16 similar working conditions, except where payment is made pursuant to a  
17 differential based on:

18 a. a seniority system;

19 b. a merit system;

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

22 d. a bona fide factor other than [~~sex~~] the protected class status,  
23 such as education, training, or experience. Such factor: (i) shall not  
24 be based upon [~~or derived from~~] a [~~sex-based~~] differential in compen-  
25 sation that was originally derived from a protected class status and

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

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1 (ii) shall be job-related with respect to the position in question and  
2 shall be consistent with business necessity. Such exception under this  
3 paragraph shall not apply when the employee demonstrates (A) that an  
4 employer uses a particular employment practice that causes a disparate  
5 impact on the basis of [~~sex~~] protected class status, (B) that an alter-  
6 native employment practice exists that would serve the same business  
7 purpose and not produce such differential, and (C) that the employer has  
8 refused to adopt such alternative practice.

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