STATE OF NEW YORK

5248--B

Cal. No. 641

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 -- 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 labor law, in relation to prohibiting wage differentials based on protected class status

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

Section 1. The section heading and subdivisions 1 and 2 of section 194 of the labor law, the section heading as added by chapter 548 of the laws of 1966, subdivision 1 as amended and subdivision 2 as added 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. No employee **with status within one or more protected class or classes** shall be paid a wage at a rate less than the rate at which an employee [~~of the opposite sex~~] **without status within the same protected class or classes** in the same establishment is paid for**: (a)** equal work on a job the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions, **or (b) 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.~~] **(i)** a seniority system;

[~~b.~~] **(ii)** a merit system;

[~~c.~~] **(iii)** a system which measures earnings by quantity or quality of production; or

[~~d.~~] **(iv)** a bona fide factor other than [~~sex~~] **status within one or more protected class or classes**, such as education, training, or experi-

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

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ence. Such factor: [~~(i)~~] **(A)** shall not be based upon or derived from a [~~sex-based~~] differential in compensation **based on status within one or more protected class or classes** and [~~(ii)~~] **(B)** 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)~~] **(1)** that an employer uses a particular employment practice that causes a disparate impact on the basis of [~~sex~~] **status within one or more protected class or classes**, [~~(B)~~] **(2)** that an alternative employment practice exists that would serve the same business purpose and not produce such differential, and [~~(C)~~] **(3)** that the employer has refused to adopt such alternative practice.

2. For the purpose of subdivision one of this section[~~,~~]**: (a)** "business necessity" shall be defined as a factor that bears a manifest relationship to the employment in question**, and (b) "protected class" shall include age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, and any employee protected from discrimination pursuant to paragraphs (a), (b), and (c) of subdivision one of section two hundred ninety-six and any intern protected from discrimination pursuant to section two hundred ninety-six-c of the executive law**.

§ 2. Section 197 of the labor law, as amended by chapter 564 of the laws of 2010, is amended to read as follows:

§ 197. Civil penalty. Any employer who fails to pay the wages of his employees or shall differentiate in rate of pay because of [~~sex~~] **protected class status**, as provided in this article, shall forfeit to the people of the state the sum of five hundred dollars for each such failure, to be recovered by the commissioner in any legal action necessary, including administrative action or a civil action.

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