

Regular Session, 2009

HOUSE BILL NO. 705

BY REPRESENTATIVE NORTON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMPLOYMENT/WAGES: Creates the Equal Pay for Women Act

1 AN ACT

2 To enact Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 23:661 through 668, relative to payment of wages; to provide for definitions;
4 to provide for prohibited acts constituting unequal pay; to provide for a complaint
5 procedure; to provide for damages; to limit actions of employees; to require certain
6 records be kept by employers; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 23:661 through 668, is hereby enacted to read as follows:

10 CHAPTER 6-A. LOUISIANA EQUAL PAY FOR WOMEN ACT

11 §661. Short title; citation

12 This Chapter shall constitute and be known as the "Louisiana Equal Pay for
13 Women Act" and may be cited as such.

14 §662. Declaration of public policy

15 The public policy of this state is declared to be that the practice of paying
16 wages to employees of one sex at a lesser rate than the rate paid to employees of the
17 opposite sex for comparable work on jobs which have comparable requirements
18 unjustly discriminates against the person receiving the lesser rate, leads to low
19 worker morale, threatens the well-being of citizens of this state, and adversely affects
20 the general welfare. It is therefore declared to be the policy of this state through the

1 exercise of its police power to correct and, as rapidly as possible, to eliminate
2 discriminatory wage practices based on sex.

3 §663. Definitions

4 As used in this Chapter, the following terms shall have the definitions
5 ascribed in this Section unless the context indicates otherwise:

6 (1) "Employee" means any individual permitted to work by an employer.

7 (2) "Employer" means an individual, partnership, corporation, association,
8 business, trust, person, labor organization as defined in this Section, or entity for
9 whom four or more employees are gainfully employed within the state and includes
10 the state of Louisiana, any state officer, any department or agency, any unit of local
11 government, and any school district.

12 (3) "Labor organization" means any organization which exists for the
13 purpose, in whole or in part, of collective bargaining or of dealing with employers
14 concerning grievances, terms or conditions of employment, or other mutual aid or
15 protection in connection with employment.

16 §664. Prohibited acts

17 A. No employer may discriminate against an employee on the basis of sex
18 by paying wages to an employee at a rate less than that of another employee for the
19 same or substantially similar work on jobs in which their performance requires equal
20 skill, effort, education, and responsibility and which are performed under similar
21 working conditions including time worked in the position.

22 B. No labor organization or its agent representing employees or an employer
23 shall cause or attempt to cause an employer to discriminate against an employee in
24 violation of this Chapter.

25 C. Nothing in Subsection A or B of this Section shall prohibit the payment
26 of different wage rates to employees where such payment is made pursuant to the
27 following:

28 (1) A seniority system.

29 (2) A merit system.

1 (3) A system that measures earnings by quantity or quality of production.

2 (4) A differential based on a bona fide factor other than sex, such as
3 education, training, or experience, except that this clause shall only apply to either
4 of the following:

5 (a) The employer demonstrates that such factor is job related with respect to
6 the position in question.

7 (b) The employer demonstrates that it furthers a legitimate business purpose,
8 except if the employee demonstrates that an alternative employment practice exists
9 that would serve the same business purpose without producing such differential and
10 that the employer has refused to adopt such alternative practice and such factor was
11 actually applied and used reasonably in light of the asserted justification.

12 D. An employer who is paying wages in violation of this Chapter may not,
13 to comply with this Chapter, reduce the wages of any other employee.

14 E. It shall be unlawful for any person to discharge or in any other manner
15 discriminate against any individual because the individual:

16 (1) Has filed any charge or has instituted or caused to be instituted any
17 proceeding under or related to this Chapter.

18 (2) Has given or is about to give any information in connection with any
19 inquiry or proceeding relating to any right provided under this Chapter.

20 (3) Has testified or is about to testify in any inquiry or proceeding relating
21 to any right provided under this Chapter.

22 §665. Complaint procedure

23 A. An employee who believes that an employer is in violation of this
24 Chapter shall submit written notice of the violation to the employer. An employer
25 who receives such written notice from an employee shall have ninety days from
26 receipt of the notice to remedy any violation of this Chapter. If an employer
27 remedies the violation within the time provided herein, the employee may not bring
28 any action against the employer under this Chapter.

1 B. If an employer fails to remedy a violation of this Chapter within the time
2 provided herein, the employee may institute a civil suit in a district court of
3 competent jurisdiction. The employee must include in the suit a copy of the written
4 notice received by the employer prior to the filing of this action.

5 §666. Liquidated damages

6 A. An employer who violates the provisions of this Chapter shall be liable
7 to the affected employees in the amount of their unpaid wages and an additional
8 amount of one-half of unpaid wages in liquidated damages as well as reasonable
9 attorney fees and costs.

10 B. In the event that such damages are appropriate, an employer who violates
11 the provisions of this Chapter shall be liable to the affected employees for
12 employment, reinstatement, promotion, and any benefits lost.

13 C. The award of monetary relief shall be limited to those violations which
14 have occurred within a thirty-six-month period prior to the employee's written notice.

15 D. The plaintiff may not be awarded monetary relief for losses incurred
16 between the time of the district court's final decision and the final determination of
17 any higher appellate court, as the case may be.

18 E. Interim earnings by the employee discriminated against shall operate to
19 reduce the monetary relief otherwise allowable.

20 F. Nothing in this Chapter prevents the settlement of a claim by agreement
21 of the employer and employee for a lesser amount.

22 G. An employee found by a court to have brought a frivolous claim under
23 this Chapter shall be held liable to the defendant for reasonable damages incurred as
24 a result of the claim, reasonable attorney fees, and court costs.

25 §667. Limitation of actions

26 A. Any action to recover unpaid wages and liquidated damages based on a
27 violation as provided for in this Chapter must be commenced within one year of the
28 date that an employee knows that his employer is in violation of this Chapter.

1 B. This one-year period shall be suspended during the ninety-day period in
2 which the employer has to respond to the employee's written notice.

3 §668. Records to be kept by employers

4 An employer subject to any provision of this Chapter shall make and preserve
5 records that document the name, address, occupation of each employee, and the
6 wages paid to each employee. These records shall be preserved for a period of not
7 less than three years.

8 Section 2. This Act shall become effective upon signature by the governor or, if not
9 signed by the governor, upon expiration of the time for bills to become law without signature
10 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
11 vetoed by the governor and subsequently approved by the legislature, this Act shall become
12 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Norton

HB No. 705

Abstract: Creates the "Louisiana Equal Pay for Women Act".

Proposed law provides that the public policy of this state is declared to be that paying unequal wages based on sex unjustly discriminates against the person receiving the lesser rate, leads to low morale, threatens the well-being of the citizens of this state, and adversely affects the general welfare.

Proposed law defines certain terms used within proposed law, including "employee" and "labor organization".

Proposed law makes it unlawful for an employer who employs four or more employees to pay wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work.

Proposed law makes it unlawful for a labor organization or its agent to cause or attempt to cause an employer to pay wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work.

Proposed law allows exceptions for instances where pay is made under a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on a factor other than sex as long as such system is job related or furthers a legitimate business purpose.

Proposed law provides that the legitimate business purpose may serve as an exception unless the employee can show that some alternative business practice could have been utilized without producing such a differential and the employer refused to adopt such alternative practice.

Proposed law prohibits an employer from reducing an employee's pay in order to comply with proposed law. Proposed law declares it unlawful for a person to discharge or discriminate against an individual who has filed any charges, given any information, or testified in any inquiry relating to any right provided under proposed law.

Proposed law provides that an employee who believes that his employer has violated a provision of proposed law may provide written notice to the employer of the violation. Proposed law provides that an employer who receives written notice of a violation shall have 90 days to remedy the violation. Proposed law further provides that if the employer remedies the violation within the 90 days, the employee may not bring an action against the employer.

Proposed law provides that if the employer fails to remedy the violation, the employee may file an action in a court of competent jurisdiction. Proposed law further provides that a copy of the written notice received by the employer be included in the suit.

Proposed law provides that an employer in violation of the provisions of proposed law may be liable for damages inclusive of unpaid wages, an amount of one-half of unpaid wages in liquidated damages, reasonable attorney fees, costs, employment, reinstatement, promotion, and any benefits lost.

Proposed law provides that monetary relief for a violation of proposed law is limited to a 36-month period prior to the employee's written notice. Proposed law provides that said monetary relief cannot be awarded for losses incurred between the time of the district court's final decision and the final determination of any higher appellate court, as the case may be. Proposed law provides that interim earnings by the employee shall reduce the amount of damages. Proposed law provides that the employer and employee may settle for a lesser amount of damages.

Proposed law provides an employer with reasonable damages, attorney fees, and court costs when an employee is found by a court to have brought a frivolous claim.

Proposed law provides for a one-year prescriptive period in bringing any action to recover from the time the employee knows about the violation. Proposed law provides for a suspension of this period during the 90-day period in which the employer has to respond to the employee's written notice.

Proposed law requires employers to make and preserve records that document names, addresses, occupations of employees, and their wages. The records shall be preserved for not less than three years.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 23:661-668)