

Regular Session, 2013

SENATE BILL NO. 153

BY SENATOR MURRAY

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

EMPLOYMENT. Creates the Equal Pay for Women Act. (gov sig)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

CHAPTER 6-A. LOUISIANA EQUAL PAY FOR WOMEN ACT

§661. Short title; citation

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

§662. Declaration of public policy

The public policy of this state is declared to be that the practice of paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable

1 requirements unjustly discriminates against the person receiving the lesser rate,
2 leads to low worker morale, threatens the well-being of citizens of this state, and
3 adversely affects the general welfare. It is therefore declared to be the policy
4 of this state through the exercise of its police power to correct and, as rapidly
5 as possible, to eliminate discriminatory wage practices based on sex.

6 **§663. Definitions**

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

9 (1) "Commission" means the Louisiana Commission on Human Rights.

10 (2) "Employee" means any individual permitted to work by an
11 employer.

12 (3) "Employer" means an individual, partnership, corporation,
13 association, business, trust, person, labor organization as defined in this Section,
14 or entity for whom fifteen or more employees are gainfully employed within the
15 state and includes the state of Louisiana, any state officer, any department or
16 agency, any unit of local government, and any school district.

17 (4) "Labor organization" means any organization which exists for the
18 purpose, in whole or in part, of collective bargaining or of dealing with
19 employers concerning grievances, terms or conditions of employment, or other
20 mutual aid or protection in connection with employment.

21 **§664. Prohibited acts**

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

28 B. No labor organization or its agent representing employees or an
29 employer shall cause or attempt to cause an employer to discriminate against

1 an employee in violation of this Chapter.

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

5 (1) A seniority system.

6 (2) A merit system.

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

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

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

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

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

23 E. It shall be unlawful for an employer to interfere with, restrain, or
24 deny the exercise of, or attempt to exercise, any right provided under this
25 Chapter. It shall be unlawful for any employer to discharge or in any other
26 manner discriminate against any individual for inquiring about, disclosing,
27 comparing, or otherwise discussing the employee's wages or the wages of any
28 other employee, or aiding or encouraging any person to exercise his or her
29 rights under this Chapter.

1 **F. It shall be unlawful for any person to discharge or in any other**
2 **manner discriminate against any individual because the individual:**

3 **(1) Has filed any charge or has instituted or caused to be instituted any**
4 **proceeding pursuant to or related to this Chapter.**

5 **(2) Has given or is about to give any information in connection with any**
6 **inquiry or proceeding relating to any right provided pursuant to this Chapter.**

7 **(3) Has testified or is about to testify in any inquiry or proceeding**
8 **relating to any right provided pursuant to this Chapter.**

9 **§665. Complaint procedure**

10 **A. An employee who believes that an employer is in violation of this**
11 **Chapter shall submit written notice of the violation to the employer. An**
12 **employer who receives such written notice from an employee shall have sixty**
13 **days from receipt of the notice to remedy any violation of this Chapter. If an**
14 **employer remedies the violation within the time provided herein, the employee**
15 **may not bring any action against the employer pursuant to this Chapter.**

16 **B. If an employer fails to remedy a violation of this Chapter within the**
17 **time provided herein, the employee may file a complaint with the commission**
18 **requesting an investigation of the complaint pursuant to R.S. 51:2257.**

19 **C. If the commission finds evidence of discriminatory action on the part**
20 **of the employer but fails to resolve the dispute, or fails to render a decision on**
21 **the dispute, the employee may institute a civil suit in a district court of**
22 **competent jurisdiction. The employee shall include in the suit a copy of the**
23 **written notices received by the employer and the commission prior to the filing**
24 **of this action, as well as any correspondence the employee received from the**
25 **employer and the commission in response to the complaint.**

26 **§666. Liquidated damages**

27 **A. An employer who violates the provisions of this Chapter shall be**
28 **liable to the affected employees in the amount of their unpaid wages and an**
29 **additional amount of one-half of unpaid wages in liquidated damages as well as**

1 reasonable attorney fees and costs.

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

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

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

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

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

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

18 **§667. Limitation of actions**

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

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

25 **§668. Records to be kept by employers**

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

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

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 15 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 it shall be unlawful for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided under proposed law. It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, or aiding or encouraging any person to exercise his or her rights 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 60 days to remedy the violation. Proposed law further provides that if the employer remedies the violation within the 60 days, the employee may not bring an action against the employer with the Human Rights Commission.

Proposed law provides that if the commission finds evidence of discriminatory action on the part of the employer but fails to resolve the dispute, or fails to render a decision on the dispute, the employee may institute a civil suit in a district court of competent jurisdiction. Proposed law further provides the employee shall include in the suit a copy of the written notices received by the employer and the commission prior to the filing of this action, as well as any correspondence the employee received from the employer and the commission

in response to the complaint.

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 ½ 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 the governor or lapse of time for gubernatorial action.

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