

2015 Regular Session

HOUSE BILL NO. 182

BY REPRESENTATIVE COX

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

EMPLOYMENT/DISCRIMINATN: Provides for pay equality regardless of gender

1 AN ACT

2 To amend and reenact R.S. 23:332(H)(3) and Chapter 6-A of Title 23 of the Louisiana  
3 Revised Statutes of 1950, to be comprised of R.S. 23:661 through 669, relative to  
4 pay equality; to provide with respect for public policy; to provide for definitions; to  
5 further prohibit pay discrimination; to provide a complaint procedure, penalties, and  
6 damages; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 23:332(H)(3) and Chapter 6-A of Title 23 of the Louisiana Revised  
9 Statutes of 1950, comprised of R.S. 23:661 through 669, are hereby amended and reenacted  
10 to read as follows:

11 §332. Intentional discrimination in employment

12 \* \* \*

13 H. Notwithstanding any other provision of this Section, it shall not be  
14 unlawful discrimination in employment for:

15 \* \* \*

16 (3) An employer to apply different standards of compensation or different  
17 terms, conditions, or privileges of employment pursuant to a bona fide seniority or  
18 merit system, or a system which measures earnings by quantity or quality of  
19 production, or any other differential based on any bona fide factor other than sex that

1 is consistent with a business necessity, or to employees who work in different  
2 locations, provided that such differences are not the result of an intention to  
3 discriminate because of race, color, religion, sex, or national origin.

4 \* \* \*

5 CHAPTER 6-A. LOUISIANA EQUAL PAY ~~FOR WOMEN~~ ACT

6 §661. Short title; citation

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

9 §662. Declaration of public policy

10 The public policy of this state is that ~~a woman who performs public service~~  
11 ~~for the state is entitled to be paid the same compensation for her service as is paid to~~  
12 ~~a man who performs same kind, grade and quality of service, and a~~ all employees be  
13 compensated equally for the same kind of work or for work that is comparable in  
14 kind and quality. No distinction in compensation may ~~not~~ be made because of sex.

15 §663. Definitions

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

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

19 (2) "Employee" means any ~~female~~ individual who ~~is employed to work forty~~  
20 ~~or more hours a week and who is employed by~~ works for the employer in return for  
21 compensation.

22 (3) "Employer" means any department, office, division, agency, commission,  
23 board, committee or other organizational unit of the state or any unit of local  
24 government or political subdivision, any individual, partnership, corporation,  
25 association, business, trust, person, contractor, labor organization, or entity for whom  
26 twenty or more employees are gainfully employed within the state.

27 (4) "Unpaid wages" means the difference between the compensation actually  
28 paid to an employee and the amount owed to the employee.

1 §664. Prohibited acts

2 A. No employer may discriminate against an employee on the basis of sex  
3 by paying wages to an employee at a rate less than that paid ~~within the same agency~~  
4 to another employee of a different sex for the same or substantially similar work on  
5 jobs ~~in which the employee's performance requires~~ that require equal or comparable  
6 skill, effort, ~~education,~~ and responsibility and ~~that are performed under similar~~  
7 involve the same or comparable working conditions ~~including time worked in the~~  
8 position.

9 B. Nothing in Subsection A of this Section shall prohibit the payment of  
10 different wage rates to employees when such payment is made pursuant to any of the  
11 following:

12 (1) A seniority system.

13 (2) A merit system.

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

15 (4) A differential based on a bona fide factor other than sex and consistent  
16 with a business necessity, including but not limited to education, training, or  
17 experience, provided that both:

18 (a) The employer demonstrates that such factor is related to the job position  
19 in question.

20 (b) No alternative employment practice would serve the same legitimate  
21 business purpose without producing such a differential.

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

24 D. It shall be unlawful for an employer to interfere with, restrain, or deny the  
25 exercise of, or attempt to exercise, any right provided ~~under~~ pursuant to this Chapter.  
26 It shall be unlawful for any employer to discriminate, retaliate, or take any adverse  
27 employment action, including but not limited to termination or in any other manner  
28 discriminate against any employee for inquiring about, disclosing, comparing, or  
29 otherwise discussing ~~the employee's~~ his wages or the wages of any other employee,

1 or aiding or encouraging any other employee to exercise his ~~or her~~ rights ~~under~~  
2 pursuant to this Chapter.

3 E. It shall be unlawful for an employer ~~subject to this Chapter~~ to  
4 discriminate, retaliate, or take any adverse employment action, including but not  
5 limited to termination against an employee because, in exercising or attempting to  
6 exercise the employee's rights ~~under~~ pursuant to this Chapter, ~~such~~ the employee:

7 (1) Has filed any complaint or has instituted or caused to be instituted any  
8 proceeding to enforce ~~the employee's~~ his rights ~~under~~ pursuant to this Chapter.

9 (2) Has provided or will provide any information in connection with any  
10 inquiry or proceeding relating to any right afforded to an employee pursuant to this  
11 Chapter.

12 (3) Has testified or will testify in any inquiry or proceeding relating to any  
13 right afforded to an employee pursuant to this Chapter.

14 F. An employee's agreement to work at a rate of compensation that is less  
15 than the rate to which the employee is entitled is not a defense that may be used by  
16 the employer in any action against him brought pursuant to this Chapter.

17 G. The provisions of this Chapter shall be construed to prohibit  
18 discrimination in pay regardless of whether the differential in pay is intentional or  
19 unintentional.

20 §665. Complaint procedure

21 A. ~~An~~ Any employee who in good faith believes that ~~her~~ his employer is in  
22 violation of this Chapter shall submit written notice of the alleged violation to ~~the~~ his  
23 employer. An employer who receives such written notice from an employee shall  
24 have sixty days from receipt of the notice to investigate the matter and remedy any  
25 ~~violation of this Chapter~~ discriminatory differential in pay. If ~~an~~ the employer  
26 remedies the violation to the satisfaction of the employee in a manner that complies  
27 with the statute and does so within the time provided herein, the employee may not  
28 bring any action against the employer ~~pursuant to this Chapter except as provided in~~  
29 ~~Subsections B and C of this Section.~~ regarding the satisfactorily remedied complaint.

1           B. If ~~an~~ the employer fails to resolve the dispute to the satisfaction of ~~such~~  
2           the employee within the ~~time provided herein~~ allotted sixty days, the employee may  
3           file a complaint with the commission requesting an investigation of the complaint  
4           pursuant to Chapter 3-A of this Title or R.S. 51:2257.

5           C. If the commission finds evidence of discriminatory, retaliatory or other  
6           adverse employment action on the part of the employer in violation of this Chapter  
7           but is unable to resolve or mediate the dispute, or fails to render a decision ~~as to~~  
8           regarding the dispute within one hundred eighty days from the filing of the  
9           complaint, or issues a finding of no discrimination on the part of the employer, the  
10          employee may institute a civil suit in ~~the Nineteenth Judicial District Court~~ a district  
11          court of competent jurisdiction.

12          §666. Damages

13          A. ~~An~~ Any employer who violates the provisions of this Chapter shall be  
14          liable to the ~~affected employees in the amount of the employee's~~ employee for  
15          unpaid wages and reasonable attorney fees, interest, and costs. The court may award  
16          the employee additional damages up to the amount of any unpaid wages, order  
17          reinstatement of employment, promotion, or compensation for lost benefits.

18          B. ~~The~~ Any award of monetary relief shall be limited to ~~those~~ violations  
19          ~~which have~~ that occurred within a thirty-six-month period prior to the employee's  
20          written notice to the employer, ~~as required in R.S. 23:665(A)~~.

21          C. ~~In cases where suit is filed in the district court, no monetary relief may~~  
22          ~~be awarded the employee for losses incurred between the date that the district court~~  
23          ~~rendered its final judgment and the date upon which all appeals of that judgment~~  
24          ~~have been exhausted~~.

25          ~~D.~~ Interim earnings by the employee ~~discriminated against~~ shall operate to  
26          reduce the monetary relief otherwise allowable ~~under~~ pursuant to this Chapter.

27          E. D. Nothing in this Chapter prevents the voluntary settlement of a claim  
28          by agreement ~~of~~ between the employer and the employee for a lesser amount than  
29          the employee alleges ~~the employee~~ he is due.

1           F. E. An employee found by a the court to have brought a frivolous claim  
2 ~~under pursuant to~~ this Chapter shall be held liable to the employer or any agent of the  
3 employer who was named a defendant in the suit, or both, for reasonable damages,  
4 reasonable attorney fees, and court costs incurred as a result of the claim.

5 §667. Limitation of actions

6           A. Any action filed in ~~the Nineteenth Judicial District Court~~ district court to  
7 recover unpaid wages or any other form of relief ~~for a violation of this Chapter~~ shall  
8 be commenced within one year of the date that an employee ~~is~~ becomes aware or  
9 should have been aware that ~~the employee's~~ his employer is in violation of this  
10 Chapter.

11           B. ~~This~~ The one-year prescriptive period shall be suspended during the  
12 sixty-day period allowed to the employer ~~by this Chapter~~ to respond to the  
13 employee's written notice, during the pendency of any administrative review or  
14 investigation of the employee's claim by the ~~Louisiana Commission on Human~~  
15 ~~Rights~~ commission or the United States Equal Employment Opportunity  
16 Commission, or both.

17 §668. Records to be kept by employers

18           ~~An~~ Every employer ~~subject to this Chapter~~ shall create and preserve records  
19 reflecting the name, sex, address, ~~and position of each employee~~, and all wages paid  
20 to each employee. These records shall be preserved for a period of ~~not less than~~ at  
21 least three years from the employee's last date of employment with the employer.

22 §669. Supplemental application

23           This Chapter is supplemental to and is not intended to supercede any  
24 provision ~~provided for in~~ of Chapter 3-A of this Title, the "Louisiana Employment  
25 Discrimination Act", which prohibits discrimination based upon sex ~~regardless of~~  
26 ~~whether the employer is a state entity, a private business, or other employer.~~

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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)]

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HB 182 Original

2015 Regular Session

Cox

**Abstract:** Extends pay equality to all persons employed in the state of La.

Present law provides that women working as public employees shall be entitled to the same compensation as men employed as public employees.

Proposed law extends present law to provide that pay equality shall apply to all persons employed in the state.

Present law defines "employee" as a woman who works more than 40 hours a week. Proposed law changes the definition of "employee" to mean any person in the state of La. who performs a job for compensation.

Present law defines "employer" as an organizational unit of state government. Proposed law extends the definition of "employer" from an organizational unit of the state to all employers within the state of La. that employ 20 or more persons.

Present law prohibits an employer from paying 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 within the same agency. Proposed law removes the specific reference to "within the same agency" and further provides that the work performed that is eligible for equal pay may be the same or comparable to the work done by another employee.

Present law allows exceptions for pay differentials in instances in which 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 the system is job related or furthers a legitimate business purpose. Proposed law retains present law and further allows for an exception in differentials in pay if the differential is based on a factor other than sex and is consistent with a business necessity.

Proposed law disallows discrimination based on sex regardless of whether the discrimination is intentional or unintentional.

Present law prohibits an employer from interfering with, restraining, or denying the exercise of, or attempted exercise of an employee's right to equal pay and his right to object and bring action to remedy the discrimination.

Present law prohibits employers from taking retaliatory measures against an employee who brings a complaint or who discusses his wages with another employee to discern if there exists a discriminatory differential in wages. Proposed law retains present law.

Present law further prohibits an employer from retaliating against an employee for encouraging a fellow employee to pursue his rights under the law. Proposed law retains present law.

Present law sets forth a complaint procedure for suspected violations of present law. Any employee who believes that his employer is discriminating in compensation may provide written notice to the employer of the violation. Upon receiving the notice, the employer is

allowed 60 days to remedy the violation. Proposed law retains present law but requires that the remedy be to the employee's satisfaction.

Present law provides that if the employer does not remedy the pay differential within the allotted 60 days, the employee may bring an action against the employer with the Human Rights Commission pursuant to present law (R.S. 51:2257). Proposed law retains present law and in addition to the complaint procedure set forth in present law (Title 51), also allows for the use of the complaint procedure set forth in present law (Chapter 3-A of Title 23) regarding discrimination in employment.

Present 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 district court. Proposed law retains present law and limits the time period the commission is allowed to decide on the dispute to 180 days from the filing of the complaint.

Present law requires that suits be brought in the 19<sup>th</sup> JDC, which proposed law changes to a district court of competent jurisdiction.

Present law requires the court to award damages in the amount of unpaid wages, attorney fees, and costs if a discriminatory differential in pay is found. Proposed law retains present law and further mandates that interest be paid and allows the court to award additional damages, reinstate employment, grant a promotion, or compensate the employee for lost benefits.

Present law limits monetary relief for a violation of the law to a 36-month period prior to the employee's written notice. Proposed law retains present law.

Present law specifies that monetary relief cannot be awarded for losses incurred between the time of the district court's final decision and the final determination of an appellate court. Proposed law deletes present law.

Present law allows interim earnings by the employee to operate to reduce the deficit owed. Proposed law retains present law.

Present law allows an employee and his employer to come to an agreement to settle the claim for an amount less than what the employee believes he is owed.

Proposed law retains present law but requires that the agreement be voluntary.

Present law provides that if the court finds that the employee's claim is frivolous, then the employee will be liable to his employer for damages, attorney fees, and court costs accrued as a result of the claim. Proposed law retains present law.

Present law provides for a one-year prescriptive period to bring claims, but provides for an interruption of prescription during the period allotted to the employer when the employee has given notice of a violation and during an administrative investigation of the violation. Proposed law retains present law.

Present law requires employers to make and preserve records that document names, addresses, positions, and wages of employees and requires that the records be preserved for at least three years from the last date of employment. Proposed law retains present law and further requires the sex of each employee be recorded and retained.

Present law provides that present law shall not supercede workplace discrimination law located in other statutes. Proposed law retains present law.

(Amends R.S. 23:332(H)(3) and 661-669)