

2015 Regular Session

SENATE BILL NO. 219

BY SENATOR MURRAY

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

EMPLOYMENT. Provides for equal pay regardless of sex and prohibits discrimination based upon sex. (8/1/15)

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AN ACT

To amend and reenact R.S. 23:332(H)(3) and Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:661 through 669, relative to equal pay; to prohibit intentional discrimination based upon sex; to provide with respect for public policy; to provide for definitions; to further prohibit pay discrimination; to provide a complaint procedure and for assessment of attorney fees, interest, costs, and damages; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

§332. Intentional discrimination in employment

* * *

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

* * *

(3) An employer to apply different standards of compensation or different

1 terms, conditions, or privileges of employment pursuant to a bona fide seniority or
 2 merit system, or a system which measures earnings by quantity or quality of
 3 production, or any other differential based on any **bona fide** factor other than sex
 4 **that is consistent with a business necessity**, or to employees who work in different
 5 locations, provided that such differences are not the result of an intention to
 6 discriminate because of race, color, religion, sex, or national origin.

7 * * *

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

9 §661. Short title; citation

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

12 §662. Declaration of public policy

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

18 §663. Definitions

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

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

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

25 (3) "Employer" means any department, office, division, agency, commission,
 26 board, committee or other organizational unit of the state **or any unit of local**
 27 **government or political subdivision, any individual, partnership, corporation,**
 28 **association, business, trust, person, contractor, labor organization, or entity for**
 29 **whom fifty or more full-time equivalent employees are gainfully employed**

1 within the state.

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

4 §664. Prohibited acts

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

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

15 (1) A seniority system.

16 (2) A merit system.

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

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

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

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

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

27 D. It shall be unlawful for an employer to interfere with, restrain, or deny the
28 exercise of, or attempt to exercise, any right provided ~~under~~ pursuant to this
29 Chapter. It shall be unlawful for any employer to discriminate, retaliate, or take any

1 adverse employment action, including but not limited to termination or in any other
 2 manner discriminate against any employee for inquiring about, disclosing,
 3 comparing, or otherwise discussing the employee's wages or the wages of any other
 4 employee, or aiding or encouraging any other employee to exercise his or her rights
 5 ~~under~~ pursuant to this Chapter.

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

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

12 (2) Has provided or will provide any information in connection with any
 13 inquiry, hearing, or proceeding relating to any right afforded to an employee
 14 pursuant to this Chapter, regardless of whether the information is related to the
 15 employee's rights or the rights of another employee.

16 (3) Has testified or will testify in any inquiry, hearing, or proceeding
 17 relating to any right afforded to an employee pursuant to this Chapter, regardless of
 18 whether the testimony is related to the employee's rights or the rights of another
 19 employee.

20 F. The provisions of this Chapter shall be construed to prohibit
 21 discrimination in pay regardless of whether the differential in pay is intentional
 22 or unintentional.

23 §665. Complaint procedure

24 A. ~~An~~ Any employee who in good faith believes that ~~her~~ his employer is in
 25 violation of this Chapter shall submit written notice of the alleged violation to ~~the~~ his
 26 employer. An employer who receives such written notice from an employee shall
 27 have sixty days from receipt of the notice to investigate the matter and remedy any
 28 ~~violation of this Chapter~~ discriminatory differential in pay. If ~~an~~ the employer
 29 remedies the violation to the satisfaction of the employee in a manner that complies

1 with the statute and **does so** within the time provided herein, the employee may not
 2 bring any action against the employer pursuant to this Chapter except as provided in
 3 Subsections B and C of this Section **regarding the satisfactorily remedied**
 4 **complaint.**

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

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

16 §666. Damages

17 A.**(1)** An employer who violates the provisions of this Chapter shall be liable
 18 to the affected employees in the amount of the employee's **employee for** unpaid
 19 wages and reasonable attorney fees, **interest,** and costs.

20 **(2) In addition to the damages provided for in Paragraph (1) of this**
 21 **Subsection, the court may award the employee additional damages, in the form**
 22 **of liquidated damages, up to the amount of any unpaid wages.**

23 **(3) In addition to the damages provided for in Paragraph (1) of this**
 24 **Subsection, the court may also order reinstatement of employment, promotion,**
 25 **or compensation for lost benefits.**

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

29 C. ~~In cases where suit is filed in the district court, no monetary relief may~~

1 ~~be awarded the employee for losses incurred between the date that the district court~~
2 ~~rendered its final judgment and the date upon which all appeals of that judgment~~
3 ~~have been exhausted.~~

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

6 ~~E.D.~~ Nothing in this Chapter prevents the **voluntary** settlement of a claim
7 by agreement ~~of~~ **between** the employer and ~~the~~ employee for a lesser amount than
8 the employee alleges the employee is due.

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

13 §667. Limitation of actions

14 A. Any action filed in ~~the Nineteenth Judicial District Court~~ **district court**
15 to recover unpaid wages or any other form of relief for a violation of this Chapter
16 shall be commenced within one year of the date that an employee is aware or should
17 have been aware that the employee's employer is in violation of this Chapter.

18 B. ~~This~~ **The** one-year prescriptive period shall be suspended during the
19 sixty-day period allowed ~~to~~ the employer by this Chapter to respond to the
20 employee's written notice, during the pendency of any administrative review or
21 investigation of the employee's claim by the ~~Louisiana Commission on Human~~
22 ~~Rights~~ **commission** or the United States Equal Employment Opportunity
23 Commission, or both.

24 §668. Records to be kept by employers

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

29 §669. Supplemental application

1 This Chapter is supplemental to and is ~~not~~ intended to ~~supercede any~~
 2 ~~provision~~ **provide additional remedies to those provisions** provided for in
 3 **pursuant to** Chapter 3-A of this Title, the "Louisiana Employment Discrimination
 4 Act", which prohibits discrimination based upon sex regardless of whether the
 5 employer is a state entity, a private business, or other employer.

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Broussard-Johnson.

DIGEST

SB 219 Reengrossed

2015 Regular Session

Murray

Present law provides that women working as employees of the state of Louisiana shall be entitled to the same compensation as men employed by the state of Louisiana.

Proposed law retains present law but extends present law to cover men as well as women.

Proposed law retains present law but extends present law to cover local government employees and private sector employees.

Present law defines "employee" as a woman who works 40 or more hours a week.

Proposed law changes the definition of "employee" to mean any person who performs work 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 that employ 50 or more full-time equivalent employees.

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 state 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 to the work done by another employee.

Proposed law adds to the conditions that no employer may discriminate against an employee on the basis of jobs that require equal or comparable skill, credentials, effort, education and responsibility, and involves the same or comparable working conditions.

Present law allows exceptions for pay differences 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 difference based on a factor other than sex so long as the system is job related or furthers a legitimate business purpose.

Proposed law retains present law but allows for an exception in differences in pay if the difference 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 the employee's right to object and bring action to remedy the discrimination.

Proposed law retains present law but clarifies that an employer is prohibited from retaliating against an employee for providing information or testimony for a fellow employee to pursue their rights under the law.

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

Proposed law retains present law and in addition to the complaint procedure set forth in present law (R.S. 51:2257) but 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 19th JDC (East Baton Rouge Parish).

Proposed law changes jurisdiction and venue of suits from the 19th JDC 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 difference 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 and 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 and allows monetary relief for a violation to be awarded for losses incurred between the time of the district court's final decision and the final determination of an appellate court.

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 and clarifies that the agreement be voluntary.

Present law requires employers to make and preserve records that document names,

addresses, positions, and wages of each employee and requires that the records be preserved for at least three years from the last date of employment.

Proposed law retains present law but further requires the sex of each employee be recorded and retained.

Present law provides that present law is supplemental and is not intended to supercede any provision of the "Louisiana Employment Discrimination Act", which prohibits intentional discrimination based upon sex regardless of whether the employer is a state entity, a private business, or other employer.

Effective August 1, 2015.

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

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Removes "comparable" from the public policy statement relative to the description of work for which the equal pay rule applies.
2. Changes the number of employees in the definition of "employer" from "20 or more" to "50 or more full-time equivalent" employees.
3. Removes proposed law prohibiting an employer from using as a defense an employee agreement to work at a rate of compensation that is less than the rate to which the employee is entitled.
4. Technical amendment.