

2017 Regular Session

HOUSE BILL NO. 384

BY REPRESENTATIVE BROADWATER

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

EMPLOYMENT/WAGES: Provides for pay equality

1 AN ACT

2 To amend and reenact R.S. 23:302(introductory paragraph), R.S. 44:4.1(B)(12), and R.S.  
3 51:2256(introductory paragraph), to enact Part IV-A of Chapter 3-A of Title 23 of  
4 the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:334.1 through  
5 334.8, and to repeal R.S. 23:332(A)(3) and Chapter 6-A of Title 23 of the Louisiana  
6 Revised Statutes of 1950, comprised of R.S. 23:661 through 669; relative to pay  
7 equality regardless of sex; to provide definitions; to provide protection from reprisal  
8 for the disclosure of wages; to prohibit retaliation; to provide a complaint procedure;  
9 to provide for damages; to provide for a limitation of actions; to require the  
10 preservation of employee records; to provide a public records exception; and to  
11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 23:302(introductory paragraph) is hereby amended and reenacted and  
14 Part IV-A of Chapter 3-A of Title 23 of the Louisiana Revised Statutes of 1950, comprised  
15 of R.S. 23:334.1 through 334.8, is hereby enacted to read as follows:

16 §302. Definitions

17 For purposes of this Chapter and unless the context clearly indicates  
18 otherwise, or unless expressly specified to the contrary, the following terms ~~shall~~  
19 have the following meanings ascribed to them:

20 \* \* \*

1                                    PART IV-A. LOUISIANA EQUAL PAY ACT2                    §334.1. Short title; citation3                                    This Part shall be known and may be cited as the "Louisiana Equal Pay Act".4                    §334.2. Declaration of public policy5                                    The public policy of this state is that all employees shall be compensated  
6                                    equally for work that is the same or equal in kind and quality. No distinction in  
7                                    compensation may be made because of sex.8                    §334.3. Definitions9                                    As used in this Part, the following terms have the definitions ascribed in this  
10                                   Section unless the context indicates otherwise:11                                   (1) "Commission" means the Louisiana Commission on Human Rights.12                                   (2) "Employee" means any individual who is employed to work forty or more  
13                                   hours a week and who is employed by an employer.14                                   (3) "Employer" means any department, office, division, agency, commission,  
15                                   board, committee or other organizational unit of the state or any unit of local  
16                                   government or political subdivision, any individual, partnership, corporation,  
17                                   association, business, trust, person, contractor, labor organization, employment  
18                                   agency, joint labor-management committee controlling apprenticeship or other  
19                                   training or retraining program, insurer, or entity for which fifty or more employees  
20                                   are employed within the state.21                                   (4) "Unpaid wages" means the difference between the compensation actually  
22                                   paid to an employee and the amount owed to the employee.23                    §334.4. Prohibited acts; discrimination based on sex24                                   A. No employer may discriminate against an employee on the basis of sex by  
25                                   paying wages to an employee at a rate less than that paid by the same employer to  
26                                   another employee of a different sex for the same or equal work on jobs that require  
27                                   equal skill, effort, education, and responsibility and involve the same or equal  
28                                   working conditions including time worked in the position.

1           B. Notwithstanding any other provision of this Part, it shall not be unlawful  
2           discrimination in employment for an employer to pay an employee at a rate less than  
3           that paid to another employee on the basis of any of the following:

4                   (1) A seniority system.

5                   (2) A merit system.

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

7                   (4) A differential based on a bona fide factor other than sex and consistent  
8           with a business necessity, including but not limited to education, training, or  
9           experience.

10           C. An employer may not, in order to comply with this Part, reduce the wages  
11           of any other employee.

12           D. It shall be unlawful for an employer to interfere with, restrain, or deny the  
13           exercise of, or attempt to exercise, any right provided pursuant to this Part. It shall  
14           be unlawful for any employer to discriminate, retaliate, or take any adverse  
15           employment action, including but not limited to termination or in any other manner  
16           discriminate against any employee for inquiring about, disclosing, comparing, or  
17           otherwise discussing the employee's wages or the wages of any other employee, or  
18           aiding or encouraging any other employee to exercise his rights pursuant to this Part.

19           E. It shall be unlawful for an employer to discriminate, retaliate, or take any  
20           adverse employment action, including but not limited to termination against an  
21           employee because, in exercising or attempting to exercise the employee's rights  
22           pursuant to this Part, the employee:

23                   (1) Has filed a complaint or has instituted or caused to be instituted a  
24           proceeding to enforce the employee's rights pursuant to this Part.

25                   (2) Has provided or will provide any information in connection with an  
26           inquiry, hearing, or proceeding relating to any right afforded to an employee  
27           pursuant to this Part, regardless of whether the information is related to the  
28           employee's rights or the rights of another employee.

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

4           F. An employee's agreement to work at a rate of compensation that is less  
5           than the rate to which the employee is entitled may not be used as a defense by the  
6           employer in any action against him brought pursuant to this Part unless the employee  
7           negotiated the lesser compensation for specific accommodations.

8           §334.5. Complaint procedure

9           A. Any employee who in good faith believes that his employer is in violation  
10          of this Part shall submit written notice of the alleged violation to his employer. An  
11          employer who receives such written notice from an employee shall have sixty days  
12          from receipt of the notice to investigate the matter and remedy any discriminatory  
13          differential in pay. If the employer remedies the violation in a manner that complies  
14          with the provisions of this Part and does so within the time provided in this Section,  
15          the employee may not bring any action against or seek unpaid wages from the  
16          employer regarding the remedied complaint.

17          B. If the employer fails to resolve the dispute in a manner that complies with  
18          the provisions of this Part within the allotted sixty days, the employee may file a  
19          complaint with the commission requesting an investigation of the complaint pursuant  
20          to this Part or R.S. 51:2257.

21          C. The commission shall conduct the investigation in compliance with the  
22          provisions of R.S. 51:2257.

23          D. If the commission finds evidence of discriminatory, retaliatory, or other  
24          adverse employment action on the part of the employer in violation of this Part but  
25          is unable to resolve or mediate the dispute, fails to render a decision regarding the  
26          dispute within one hundred eighty days from the filing of the complaint, or issues a  
27          finding of no discrimination on the part of the employer, the employee may institute  
28          a civil suit in a district court of competent jurisdiction. In no event shall a civil suit

1 be instituted prior to the expiration of one hundred eighty days from the filing of the  
2 complaint with the commission.

3 §334.6. Damages

4 A.(1) An employer who is found to have violated the provisions of this Part  
5 shall be liable to the employee for unpaid wages, interest, and may be awarded  
6 reasonable attorney fees and court costs. The award for unpaid wages shall not  
7 exceed the payment of unpaid wages for thirty-six months.

8 (2) In addition to the damages provided for in this Subsection, the court may  
9 order reinstatement of employment or compensation for lost benefits.

10 B. The award of monetary relief beyond attorney fees shall be limited to  
11 violations that occurred within a thirty-six-month period prior to the employee's  
12 written notice to the employer.

13 C. Interim earnings by the employee shall operate to reduce the monetary  
14 relief otherwise allowable pursuant to this Part.

15 D. Nothing in this Part prevents the voluntary settlement of a claim by  
16 agreement between the employer and the employee for a lesser amount than the  
17 employee alleges the employee is due.

18 E. An employee found by the court to have brought a frivolous claim  
19 pursuant to this Part shall be held liable to the employer or any agent of the employer  
20 who was named a defendant in the suit, or both, for reasonable damages, reasonable  
21 attorney fees, and court costs incurred as a result of the claim.

22 §334.7. Limitation of actions

23 A. Any action filed in district court to recover unpaid wages or any other  
24 form of relief for a violation of this Part shall be commenced within one year of the  
25 date that an employee becomes aware or should have been aware that the employee's  
26 employer is in violation of this Part.

27 B. The one-year prescriptive period shall be suspended during the sixty-day  
28 period allowed to the employer by this Part to respond to the employee's written  
29 notice and during the one hundred eighty day pendency allowed for administrative

1 review or investigation of the employee's claim by the commission or the United  
2 States Equal Employment Opportunity Commission, or both.

3 C. Any action relative to discrimination based on pay shall be limited to those  
4 included in this Part.

5 §334.8. Records to be kept by employers

6 A. Each employer subject to the provisions of this Part shall create and  
7 preserve records reflecting the name, sex, address, position of each employee, and  
8 all wages paid to each employee. The records shall be preserved for each employee  
9 for the preceding three years during employment and for a period of one year  
10 following a separation of employment.

11 B.(1) Any records created, preserved, or obtained pursuant to this Part shall  
12 be confidential and privileged, and shall not be subject to disclosure under the Public  
13 Records Law when in the custody or control of the commission.

14 (2) Any records created, preserved, or obtained pursuant to this Part shall be  
15 confidential. The employer may seek a protective order and an in camera inspection  
16 by the court of competent jurisdiction of such records prior to any public disclosure.

17 Section 2. R.S. 44:4.1(B)(12) is hereby amended and reenacted to read as follows:

18 §4.1. Exceptions

19 \* \* \*

20 B. The legislature further recognizes that there exist exceptions, exemptions,  
21 and limitations to the laws pertaining to public records throughout the revised  
22 statutes and codes of this state. Therefore, the following exceptions, exemptions, and  
23 limitations are hereby continued in effect by incorporation into this Chapter by  
24 citation:

25 \* \* \*

26 (12) R.S. 23:334.8, 1177, R.S. 23:1177, 1197, 1200.7, 1291, 1292, 1293,  
27 1306, 1660, 1671

28 \* \* \*

1 Section 3. R.S. 51:2256(introductory paragraph) is hereby amended and reenacted  
2 to read as follows:

3 §2256. Conspiracy to violate human rights and discrimination laws

4 It shall be an unlawful practice for an employer as defined in R.S. 23:302 or  
5 334.3 to conspire:

6 \* \* \*

7 Section 4. R.S. 23:332(A)(3) and Chapter 6-A of Title 23 of the Louisiana Revised  
8 Statutes of 1950, comprised of R.S. 23:661 through 669, are hereby repealed in their  
9 entirety.

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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 384 Original

2017 Regular Session

Broadwater

**Abstract:** Requires pay equality for employees in the state regardless of sex.

Present law requires that women who are employed by the state or a political subdivision of the state be paid the same as men employed by the state.

Proposed law repeals present law but expands the requirement that all citizens of the state employed by either a public or a private employer be paid equally for equal work, regardless of sex. Further, proposed law provides exceptions; paying an employee less than another employee is not discrimination if the differential is on the basis of a seniority system, a merit system, a system that measures earnings based on quality or quantity of production, or if the difference in compensation is based on a bonafide factor other than sex.

Proposed law prohibits any employer from taking any retaliatory action against any employee for inquiring about, disclosing, comparing, or otherwise discussing wage information.

Proposed law further prohibits an employer from taking any retaliatory action against an employee because the employee is exercising or attempting to exercise the rights given pursuant to proposed law including filing a complaint, providing information in any proceeding relating to his rights or the rights to another employee, or testifying at any proceeding regarding those rights.

Proposed law specifies that the agreement of an employee to be compensated less is not a defense to a violation of proposed law.

Proposed law provides that if an employee has a complaint regarding the rights afforded him by proposed law, that he give notice to his employer of his complaint and allot 60 days during which the employer can address the issues.

Proposed law provides that if the employer fails to address the issue within the 60 days, that the employee may file a complaint with the La Commission on Human Rights, who, in turn, has 180 days to investigate and render a decision.

Proposed law prohibits an employee from filing a civil suit during the time period during which the commission is investigating his complaint.

Proposed law provides for damages and attorney fees when the actions of an employer are found to have been discriminatory or retaliatory.

Proposed law provides a procedure for instances in which an employee has brought a frivolous claim, and provides a one year period of prescription.

Proposed law requires that employer create and preserve employee records and maintain those records for a period of 3 years during the employee's employment and for a period of 1 year after separation of employment.

Proposed law creates a public records exception.

(Amends R.S. 23:302(intro. para.), R.S. 44:4.1(B)(12), and R.S. 51:2256(intro. para.); Adds R.S. 23:334.1 through 334.8; Repeals R.S. 23:332(A)(3) and R.S. 23:661 through 669)