

2016 Regular Session

HOUSE BILL NO. 397

BY REPRESENTATIVES MORENO, COX, AND HUNTER

EMPLOYMENT: Provides relative to equal pay for women

## 1 AN ACT

2 To amend and reenact Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950,  
3 to be comprised of R.S. 23:661 through 669, relative to equal pay; to provide with  
4 respect for public policy; to provide for definitions; to further prohibit pay  
5 discrimination; to provide a complaint procedure, penalties, attorney fees, and  
6 damages; 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 669, is hereby amended and reenacted to read as follows:

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

11 §661. Short title; citation

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

14 §662. Declaration of public policy

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

1           B. Louisiana women earn, on average, sixty-five cents for every dollar a man  
2           earns for full-time work. This figure has decreased for three years in a row, giving  
3           Louisiana the largest gender wage gap in the country.

4           C. The pay gap is more exaggerated for women of color in Louisiana, with  
5           African-American women earning forty-eight cents, and Hispanic women earning  
6           fifty-three cents, for every dollar earned by white non-Hispanic men.

7           D. Regardless of level of educational attainment and the field of  
8           employment, Louisiana women earn less than men at the same level in the same  
9           field. Women's earnings are lower than men's in all twenty-five listed occupational  
10          fields, including those fields where women dominate.

11          E. The gender wage gap contributes to the high poverty rate among  
12          Louisiana women and children. The average woman loses about sixteen thousand  
13          dollars per year to the wage gap, which adds up to a lifetime earnings loss of over six  
14          hundred fifty thousand dollars. This affects not only a woman's earning capacity as  
15          a breadwinner for the family but her long term economic security as well, limiting  
16          the possibility of building assets, starting a business, or retiring with adequate  
17          financial resources.

18          F. When wages are paid unfairly, the government must bear the cost of  
19          assisting with the needs of low income families, and make up for the loss in tax  
20          revenue that fair, higher wages would bring. Businesses lose due to lower  
21          productivity and higher employee turnover generated in workplaces that do not have  
22          fair pay practices.

23          G. Louisiana's laws have not been effective in combating the disparity  
24          caused by discrimination and pay secrecy. Women are not able to challenge wage  
25          discrimination that they do not know exists.

26          H. To eliminate the gender wage gap in Louisiana, the state's equal pay  
27          provisions and laws regarding wage disclosure must be improved.

## 1        §663. Definitions

2                As used in this Chapter, the following terms ~~shall~~ have the definitions  
3 ascribed in this Section unless the context indicates otherwise:

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

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

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

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

## 15        §664. Prohibited acts

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

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

26                (1) A seniority system.

27                (2) A merit system.

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

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

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

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

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

10 D. It shall be unlawful for an employer to interfere with, restrain, or deny the  
11 exercise of, or attempt to exercise, any right provided ~~under~~ pursuant to this Chapter.

12 It shall be unlawful for any employer to discriminate, retaliate, or take any adverse  
13 employment action, including but not limited to termination or in any other manner  
14 discriminate against any employee for inquiring about, disclosing, comparing, or  
15 otherwise discussing the employee's wages or the wages of any other employee, or  
16 aiding or encouraging any other employee to exercise his ~~or her~~ rights ~~under~~  
17 pursuant to this Chapter.

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

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

24 (2) Has provided or will provide any information in connection with any  
25 inquiry, hearing, or proceeding relating to any right afforded to an employee  
26 pursuant to this Chapter, regardless of whether the information is related to the  
27 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 Chapter, regardless of whether  
3 the 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 is not a defense that may be used by  
6 the employer in any action against him brought pursuant to this Chapter.

7 G. The provisions of this Chapter shall be construed to prohibit  
8 discrimination in pay regardless of whether the differential in pay is intentional or  
9 unintentional.

10 §665. Complaint procedure

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

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

24 C. If the commission finds evidence of discriminatory, retaliatory, or other  
25 adverse employment action on the part of the employer in violation of this Chapter  
26 but is unable to resolve or mediate the dispute, or fails to render a decision ~~as to~~  
27 regarding the dispute within one hundred eighty days from the filing of the  
28 complaint, or issues a finding of no discrimination on the part of the employer, the

1 employee may institute a civil suit in ~~the Nineteenth Judicial District Court~~ a district  
2 court of competent jurisdiction.

3 §666. Damages

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

7 (2) In addition to the damages provided for in this Subsection, the court may  
8 award the employee liquidated damages, up to the amount of any unpaid wages,  
9 reinstatement of employment, promotion, or compensation for lost benefits.

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

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

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

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

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

27 §667. Limitation of actions

28 A. Any action filed in ~~the Nineteenth Judicial District Court~~ district court to  
29 recover unpaid wages or any other form of relief for a violation of this Chapter shall

1 be commenced within one year of the date that an employee is becomes aware or  
 2 should have been aware that the ~~employee's~~ his employer is in violation of this  
 3 Chapter.

4 B. ~~This~~ The one-year prescriptive period shall be suspended during the  
 5 sixty-day period allowed to the employer ~~by this Chapter~~ to respond to the  
 6 employee's written notice, during the pendency of any administrative review<sub>2</sub> or  
 7 investigation of the employee's claim by the ~~Louisiana Commission on Human~~  
 8 ~~Rights~~ commission or the United States Equal Employment Opportunity  
 9 Commission, or both.

10 §668. Records to be kept by employers

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

15 §669. Supplemental application

16 This Chapter is supplemental to and is ~~not~~ intended to ~~supercede any~~  
 17 ~~provision provided for~~ provide additional remedies to those provisions in Chapter 3-  
 18 A of this Title, the "Louisiana Employment Discrimination Act", which prohibits  
 19 discrimination based upon sex regardless of whether the employer is a ~~state~~ public  
 20 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 397 Original

2016 Regular Session

Moreno

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

Present law provides a statement of public policy, of which proposed law alters and expounds upon, regarding the pay differential between men and women in 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. 23:661-669)