
DIGEST

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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 19th 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)