

2016 Regular Session

SENATE BILL NO. 254

BY SENATOR MORRELL

EMPLOYMENT. Provides that the Louisiana Equal Pay Act be applicable to men and private employers and requires government contractors to verify equal pay practices. (8/1/16)

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 for 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 The public policy of this state is that ~~a woman who performs public service~~

16 ~~for the state is entitled to be paid the same compensation for her service as is paid to~~

17 ~~a man who performs same kind, grade and quality of service, and a~~ **all employees**

1 **shall be compensated equally for work that is the same or comparable in kind**
2 **and quality.** No distinction in compensation may ~~not~~ be made because of sex.

3 §663. Definitions

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

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

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

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

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

17 §664. Prohibited acts

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

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

28 (1) A seniority system.

29 (2) A merit system.

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

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

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

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

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

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

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

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

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

29 (3) Has testified or will testify in any inquiry, **hearing**, or proceeding relating

1 to any right afforded to an employee pursuant to this Chapter, regardless of whether
 2 the testimony is related to the employee's rights or the rights of another
 3 employee.

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

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

11 §665. Complaint procedure

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

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

26 C. If the commission finds evidence of discriminatory, retaliatory or other
 27 adverse employment action on the part of the employer in violation of this Chapter
 28 but is unable to resolve or mediate the dispute, or fails to render a decision ~~as to~~
 29 regarding the dispute within one hundred eighty days from the filing of the

1 **complaint**, or issues a finding of no discrimination on the part of the employer, the
 2 employee may institute a civil suit in ~~the Nineteenth Judicial District Court~~ **a district**
 3 **court of competent jurisdiction**.

4 §666. Damages

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

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

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

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

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

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

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

28 §667. Limitation of actions

29 A. Any action filed in ~~the Nineteenth Judicial District Court~~ **district court**

1 to recover unpaid wages or any other form of relief for a violation of this Chapter
2 shall be commenced within one year of the date that an employee is aware or should
3 have been aware that the employee's employer is in violation of this 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 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 the name, sex, address, ~~and~~ position of each employee, and all wages paid
13 to each employee. These records shall be preserved for a period of not less than three
14 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~~ **provide additional remedies to those provisions** provided for in
18 **pursuant to** Chapter 3-A of this Title, the "Louisiana Employment Discrimination
19 Act", which prohibits discrimination based upon sex regardless of whether the
20 employer is a state entity, a private business, or other employer.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by James Benton.

DIGEST

SB 254 Original

2016 Regular Session

Morrell

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 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 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 or comparable to the work done by another employee.

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, 2016.

(Amends R.S. 23:661- 669)