
The original instrument was prepared by James Benton. The following digest, which does not constitute a part of the legislative instrument, was prepared by Nancy Vicknair.

DIGEST

SB 254 Reengrossed

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 50 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 equal 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 removes the provision in present law authorizing an exception if no alternative employment practice would serve the same legitimate business purpose without producing such pay difference.

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 his rights under the law.

Proposed law provides that an employee's agreement to work at a rate of compensation that is less than the rate to which such employee is entitled may not be used as a defense by the employer in any action against him brought pursuant to proposed law unless such employee negotiated the lesser compensation for specific accommodations.

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 and prohibits any employee from seeking unpaid wages from an employer if such employer has remedied the discriminatory differential in pay.

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) 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. Prohibits any employee from filing a civil suit prior to the expiration of 180 days from the filing of the complaint with the commission.

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 requires the employer to be liable for unpaid wages and interest. Further requires the award for unpaid wages not to exceed the payment of such unpaid wages for 36 months. Requires the prevailing party to be awarded reasonable attorney fees. Authorizes the court to 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. Provides 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 and allows monetary relief beyond attorney fees 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 the amount 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.

Proposed law requires any records created, preserved, or obtained to be confidential and privileged, and not subject to disclosure under the Public Records Law when in the custody or control of the commission. Authorizes the employer to seek a protective order and an in camera inspection by the court of competent jurisdiction of such records prior to any public disclosure.

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

Proposed law provides that nothing in present law is intended to provide any additional remedies or causes of action for any other category of employment discrimination.

Effective August 1, 2016.

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

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Change the term describing the work performed by employees for compensation from "same or comparable" to "same or equal" in kind and quality.
2. Increase the number of employees required for an entity to be considered an "employer" within the state from "twenty" to "fifty".
3. Remove the provision in present law authorizing an exception if no alternative employment practice would serve the same legitimate business purpose without producing such pay difference.
4. Provide that an employee's agreement to work at a rate of compensation that is less than the rate to which such employee is entitled may not be used as a defense by the employer in any action against him unless such employee negotiated the lesser compensation for specific accommodations.
5. Prohibit an employee from seeking unpaid wages from an employer if the employer has remedied the discriminatory differential in pay.
6. Remove requirement that the remedy be to the employee's satisfaction.
7. Prohibit any employee from filing a civil suit prior to the expiration of 180 days from the filing of the complaint with the commission.
8. Require the award for unpaid wages not to exceed the payment of such unpaid wages for 36 months.
9. Require the prevailing party to be awarded reasonable attorney fees.
10. Provide for the confidentiality of records created, preserved, or obtained pursuant to proposed law and prohibit disclosure of such documents under the Public Records Law when such records are in the custody or control of the commission.
11. Specify that proposed law is not intended to provide additional remedies for any other category of employment discrimination.