

Regular Session, 2013

SENATE BILL NO. 68

BY SENATOR PETERSON

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

EMPLOYMENT. Creates the Equal Pay for Women Act. (gov sig)

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AN ACT

To enact Chapter 1-A of Title 42 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 42:5 through 5.7, relative to payment of wages to certain public employees; to provide for a declaration of public policy; to provide for definitions; to provide for prohibited acts constituting unequal pay; to provide for a complaint procedure; to provide for damages; to limit actions of employees; to require certain records be kept by employers; to direct the Louisiana Law Institute to make certain conforming technical changes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 1-A of Title 42 of the Louisiana Revised Statutes of 1950, comprised of R.S. 42:5 through 5.7, is hereby enacted to read as follows:

CHAPTER 1-A. LOUISIANA EQUAL PAY FOR WOMEN ACT

§5. Short title; citation

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

§5.1. Declaration of public policy

The public policy of this state is declared to be that the practice of paying

1 wages to employees of one sex at a lesser rate than the rate paid to employees
2 of the opposite sex for comparable work on jobs which have comparable
3 requirements unjustly discriminates against the person receiving the lesser rate,
4 leads to low worker morale, threatens the well-being of citizens of this state, and
5 adversely affects the general welfare. It is therefore declared to be the policy
6 of this state through the exercise of its police power to correct and, as rapidly
7 as possible, to eliminate discriminatory wage practices based on sex.

8 **§5.2. Definitions**

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

11 **(1)(a) "Public employee" means any individual who is an employee of**
12 **the state, or any branch of state government, including the executive, legislative,**
13 **and judicial branches, or any state department, board, commission, or any**
14 **other state agency, including but not limited to any individual who meets any**
15 **of the following conditions:**

16 **(i) An administrative officer or official of a state governmental entity**
17 **who is not filling an elective office.**

18 **(ii) Appointed by any elected official when acting in an official capacity,**
19 **and the appointment is to a post or position wherein the appointee is to serve the**
20 **state governmental entity or an agency thereof, either as a member of an agency**
21 **or as an employee thereof.**

22 **(iii) Engaged in the performance of a state governmental function.**

23 **(iv) Under the supervision or authority of an elected official or another**
24 **employee of a state governmental entity.**

25 **(b) "Public employee" does not mean anyone who meets any of the**
26 **following conditions:**

27 **(i) An individual who is an elected official.**

28 **(ii) Any individual whose duties are limited to part-time or periodic**
29 **service in the National Guard pursuant to 32 U.S.C. 502.**

1 **(2) "Diminished wages" means that amount which is equal to the sum**
2 **of the wages that the employee would have been paid, if the employee had not**
3 **been a victim of discriminatory wage practices, minus the amount which the**
4 **employee was actually paid.**

5 **(3) "Employer" means the state of Louisiana, the state, or any branch**
6 **of state government, including the executive, legislative, and judicial branches,**
7 **or any state department, board, commission, or any other state agency.**

8 **(4) "Labor organization" means any organization which exists for the**
9 **purpose, in whole or in part, of collective bargaining or of dealing with**
10 **employers concerning grievances, terms or conditions of employment, or other**
11 **mutual aid or protection in connection with employment.**

12 **§5.3. Prohibited acts**

13 **A. No employer may discriminate against an employee on the basis of**
14 **sex by paying wages to an employee at a rate less than that of another employee**
15 **for the same or substantially similar work which requires equal skill, effort,**
16 **education, and responsibility and which is performed under similar working**
17 **conditions including time worked in the position.**

18 **B. No labor organization or its agent representing employees or an**
19 **employer shall cause or attempt to cause an employer to discriminate against**
20 **an employee in violation of this Chapter.**

21 **C. Nothing in Subsection A or B of this Section shall prohibit the**
22 **payment of different wage rates to employees where such payment is made**
23 **pursuant to the following:**

24 **(1) A seniority system.**

25 **(2) A merit system.**

26 **(3) A system that measures earnings by quantity or quality of**
27 **production.**

28 **(4) A differential based on a bona fide factor other than sex, such as**
29 **education, training, or experience, except that this clause shall apply only to**

1 either of the following:

2 (a) The employer demonstrates that such factor is job-related with
3 respect to the position in question.

4 (b) The employer demonstrates that it furthers a legitimate government
5 purpose, except if the employee demonstrates that an alternative employment
6 practice exists that would serve the same government purpose without
7 producing such differential and that the employer has refused to adopt such
8 alternative practice and such factor was actually applied and used reasonably
9 in light of the asserted justification.

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

12 E. It shall be unlawful for any person to discharge or in any other
13 manner discriminate against any individual because the individual has done any
14 of the following:

15 (1) Filed any charge or has instituted or caused to be instituted any
16 proceeding pursuant to or related to this Chapter.

17 (2) Given or is about to give any information in connection with any
18 inquiry or proceeding relating to any right provided pursuant to this Chapter.

19 (3) Testified or is about to testify in any inquiry or proceeding relating
20 to any right provided pursuant to this Chapter.

21 §5.4. Complaint procedure

22 A. An employee who believes that an employer is in violation of this
23 Chapter shall submit written notice of the violation to the employer. An
24 employer who receives such written notice from an employee shall have ninety
25 days from receipt of the notice to remedy any violation of this Chapter. If an
26 employer remedies the violation within the time provided herein, the employee
27 may not bring any action against the employer pursuant to this Chapter.

28 B. If an employer fails to remedy a violation of this Chapter within the
29 time provided herein, the employee may institute a civil suit in a district court

1 of competent jurisdiction. The employee shall include in the suit a copy of the
2 written notice received by the employer prior to the filing of this action.

3 §5.5. Damages; liquidated damages

4 A. An employer who violates the provisions of this Chapter shall be
5 liable to the affected employee in the amount of their unpaid wages or
6 diminished wages and an additional amount of one-half of unpaid wages or
7 diminished wages in liquidated damages as well as reasonable attorney fees and
8 costs.

9 B. In the event that such damages are appropriate, an employer who
10 violates the provisions of this Chapter shall be liable to the affected employees
11 for employment, reinstatement, promotion, and any benefits lost.

12 C. The award of monetary relief shall be limited to those violations
13 which have occurred within a thirty-six-month period prior to the employee's
14 written notice.

15 D. The plaintiff may not be awarded monetary relief for losses incurred
16 between the time of the district court's final decision and the final determination
17 of any higher appellate court, as the case may be.

18 E. Interim earnings by the employee discriminated against shall operate
19 to reduce the monetary relief otherwise allowable.

20 F. Nothing in this Chapter shall prevent the settlement of a claim by
21 agreement of the employer and employee for a lesser amount.

22 G. An employee found by a court to have brought a frivolous claim
23 under this Chapter shall be liable to the defendant for reasonable damages
24 incurred as a result of the claim, reasonable attorney fees, and court costs.

25 §5.6. Limitation of actions

26 A. Any action to recover unpaid wages and liquidated damages based
27 on a violation as provided for in this Chapter shall be commenced within one
28 year of the date that an employee knows or has reason to know that his
29 employer is in violation of this Chapter.

1 **B. This one-year period shall be suspended during the ninety-day period**
2 **in which the employer has to respond to the employee's written notice.**

3 **§5.7. Records to be kept by employers**

4 **An employer subject to any provision of this Chapter shall make and**
5 **preserve records that document the name, address, occupation of each**
6 **employee, and the wages paid to each employee. These records shall be**
7 **preserved for a period of not less than three years.**

8 Section 2. The Louisiana State Law Institute is hereby directed to change the
9 designation of "OPEN MEETINGS LAW", which is comprised of R.S. 42:11 through 28,
10 from Chapter 1-A of Title 42 of the Revised Statutes of 1950 to Chapter 1-B of Title 42 of
11 the Louisiana Revised Statutes of 1950.

12 Section 3. This Act shall become effective upon signature by the governor or, if not
13 signed by the governor, upon expiration of the time for bills to become law without signature
14 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
15 vetoed by the governor and subsequently approved by the legislature, this Act shall become
16 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

Proposed law provides that the public policy of this state is declared to be that paying unequal wages based on sex unjustly discriminates against the person receiving the lesser rate, leads to low morale, threatens the well-being of the citizens of this state, and adversely affects the general welfare. Provides for the state to eliminate discriminatory wage practices based on sex, cites proposed law as the "Louisiana Equal Pay for Women Act".

Proposed law provides for the following definitions:

- (1) (a) "Public employee" means any individual who is an employee of the state, or any branch of state government, including the executive, legislative, and judicial branches, or any state department, board, commission, or any other state agency, including but not limited to any individual who meets any of the following conditions:
- (i) A non-elected administrative officer or official of a state governmental entity.
- (ii) Appointed by any elected official when acting in an official capacity to a post or position wherein the appointee is to serve the state governmental entity or an agency thereof, either as a member of an

agency or as an employee thereof.

- (iii) Engaged in the performance of a state governmental function.
 - (iv) Under the supervision or authority of an elected official or another employee of a state governmental entity.
- (b) (i) Excludes any elected official.
 - (ii) Excludes anyone whose public service is limited to part-time, periodic duty in the National Guard.
- (2) "Diminished wages" means that amount which is equal to the sum of the wages that the employee would have been paid if the employee had not been a victim of discriminatory wage practices, minus the amount which the employee was actually paid.
- (3) "Employer" means the state of Louisiana, any state officer, any department or agency, any political subdivision, any unit of local government, and any school district.
- (4) "Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

Proposed 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.

Proposed law prohibits a labor organization to cause or attempt to cause an employer to pay 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.

Proposed law allows exceptions for instances where 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 such system is job-related or furthers a legitimate governmental purpose.

Proposed law provides that the legitimate governmental purpose may serve as an exception unless the employee can show that some alternative governmental practice could have been utilized without producing such a differential and the employer refused to adopt such alternative practice.

Proposed law prohibits an employer from reducing another employee's pay in order to comply with proposed law. Proposed law prohibits an employer from discharging or discriminating against an individual who has filed any charges, given any information, or testified in any inquiry relating to any right provided under proposed law.

Proposed law provides that an employee who believes that his employer has violated a provision of proposed law may provide written notice to the employer of the violation. Provides that such employer shall have 90 days to remedy the violation. Provides that if the employer remedies the violation within the 90 days, the employee may not bring an action against the employer.

Proposed law provides that if the employer fails to remedy the violation, the employee may file an action in a district court of competent jurisdiction.

Proposed law provides that an employer who violates proposed law may be liable for damages inclusive of unpaid wages, diminished wages, an amount of one-half of unpaid wages in liquidated damages, reasonable attorney fees, costs, employment, reinstatement, promotion, and any benefits lost.

Proposed law limits the award of monetary relief to violation occurring within a 36-month period prior to the employee's written notice. Prohibits award for monetary relief for losses incurred between the time of the district court's final decision and the final determination of any higher appellate court. Proposed law provides that interim earnings by the employee shall reduce the amount of damages. Further provides that the employer and employee may settle for a lesser amount of damages.

Proposed law provides an employer with reasonable damages, attorney fees, and court costs when an employee is found by a court to have brought a frivolous claim.

Proposed law provides for a one-year prescriptive period in bringing any action to recover from the time the employee knows or has reason to know about the violation. Proposed law provides for a suspension of this period during the 90-day period in which the employer has to respond to the employee's written notice.

Proposed law requires employers to make and preserve for a three-year period records that document names, addresses, occupations of employees, and their wages.

Proposed law directs the La. State Law Institute to make technical changes.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 42:5 - 5.7)