

2020 Regular Session

SENATE BILL NO. 38

BY SENATOR CARTER

EMPLOYMENT. Provides with respect to wage secrecy and pay discrimination. (8/1/20)

1 AN ACT

2 To amend and reenact R.S. 23:332(H)(3) and to enact R.S. 23:332(A)(4), relative to
3 employment; to provide relative to employment discrimination; to prohibit
4 discrimination against an employee who discloses or inquires about wages; to
5 provide relative to nondisclosure agreements; to provide for exceptions; to provide
6 for certain terms and conditions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 23:332(H)(3) is hereby amended and reenacted and R.S. 23:332(A)(4)
9 is hereby enacted to read as follows:

10 §332. Intentional discrimination in employment

11 A. It shall be unlawful discrimination in employment for an employer to
12 engage in any of the following practices:

13 * * *

14 **(4)(a)(i) Intentionally require, as a condition of employment, an**
15 **employee refrain from discussing, disclosing, or inquiring about the amount of**
16 **his wages or the wages of another employee.**

17 **(ii) Intentionally require, as a condition of employment, an employee sign**

1 a waiver, nondisclosure agreement, or other document that purports to deny an
2 employee the right to discuss, disclose, or inquire about the amount of his
3 wages.

4 (iii) Intentionally retaliate, discipline, discharge, or otherwise
5 discriminate against an employee for discussing, disclosing, or inquiring about
6 the amount of his wages or the wages of another employee.

7 (b) Nothing in this Paragraph shall be construed to obligate an employee
8 to disclose his wage information.

9 (c) The provisions of this Paragraph shall not apply when an employee,
10 who has access to wage information of other employees as part of his essential
11 job functions, discloses the wages of another employee to individuals who do not
12 otherwise have access to the information, unless such disclosure is in response
13 to a complaint or charge or in furtherance of an investigation, proceeding,
14 hearing, or action pursuant to this Chapter, including an investigation
15 conducted by the employer.

16 * * *

17 H. Notwithstanding any other provision of this Section, it shall not be
18 unlawful discrimination in employment for:

19 * * *

20 (3) An employer to apply different standards of compensation or different
21 terms, conditions, or privileges of employment pursuant to a bona fide seniority or
22 merit system, or a system which measures earnings by quantity or quality of
23 production, or any other differential based on ~~any~~ **a bona fide business** factor other
24 than sex **and prior salary history**, or to employees who work in different locations,
25 provided that such differences are not the result of an intention to discriminate
26 because of race, color, religion, sex, or national origin.

27 * * *

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

DIGEST

SB 38 Original 2020 Regular Session Carter

Present law provides relative to intentional discrimination in employment.

Present law provides that an employer shall not engage in the following practices:

- (1) Intentionally fail or refuse to hire or discharge any individual, or otherwise discriminate against an individual, because of his race, color, religion, sex, or national origin.
- (2) Intentionally limit, segregate, or classify an employee or applicant for employment in a way that would deprive such employee or applicant of employment opportunities because of his race, color, religion, sex, or national origin.
- (3) Intentionally pay wages to an employee at a rate less than that of another employee of the opposite sex for equal work.

Proposed law retains present law and prohibits an employer from engaging in the following practices:

- (1) Intentionally require an employee to refrain from discussing, disclosing, or inquiring about his wages or the wages of another employee.
- (2) Intentionally require an employee sign a waiver or nondisclosure agreement that purports to deny an employee the right to discuss, disclose, or inquire about the amount of his wages.
- (3) Intentionally retaliate, discipline, discharge, or otherwise discriminate against an employee for discussing, disclosing, or inquiring about his wages or the wages of another employee.

Proposed law does not obligate an employee to disclose his wage information.

Proposed law shall not apply to an employee, who has access to wage information of other employees as part of his essential job functions, discloses the wages of another employee to individuals who do not otherwise have access to the information, unless such disclosure is in response to a complaint or charge or in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer.

Present law provides that it shall not be unlawful discrimination in employment for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production, or any other differential based on any factor other than sex, or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin.

Proposed law retains present law and adds that the ability of the employer to apply different standards of compensation or different terms, conditions, or privileges of employment based on a system which measures earnings by quantity or quality of production, or any other differential must be based on a bona fide business factor other than sex and prior salary history.

Effective August 1, 2020.

(Amends R.S. 23:332(H)(3); adds R.S. 23:332(A)(4))