

Regular Session, 2013

SENATE BILL NO. 153

BY SENATOR MURRAY

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 6-A of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:661 through 669, relative to payment of wages; to provide for employment in state government; 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; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:661 through 669, is hereby enacted to read as follows:

CHAPTER 6-A. LOUISIANA EQUAL PAY FOR WOMEN ACT

§661. Short title; citation

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

§662. Declaration of public policy

The public policy of this state is that a woman who performs public service for the state is entitled to be paid the same compensation for her service

1 as is paid to a man who performs the same kind, grade and quality of service,
2 and a 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 individual who is employed to work forty or
8 more hours a week. any female individual employed by the employer.

9 (3) "Employer" means any department, office, division, agency,
10 commission, board, committee or other organizational unit of the state.

11 **§664. Prohibited acts**

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

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

22 (1) A seniority system.

23 (2) A merit system.

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

26 (4)(a) A differential based on a bona fide factor other than sex, including
27 but not limited to education, training, or experience, provided that both:

28 (i) The employer demonstrates that such factor is related to the job
29 position in question.

1 **(ii) No alternative employment practice would serve the same legitimate**
2 **business purpose without producing such a differential.**

3 **(b) However, the employer may not claim such a differential serves a**
4 **legitimate governmental purpose, if the employee demonstrates both:**

5 **(i) The existence of an alternative employment practice that would serve**
6 **the same business purpose without producing such differential.**

7 **(ii) That the employer has refused to adopt such alternative practice.**

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

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

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

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

25 **(2) Has provided or will provide any information in connection with any**
26 **inquiry or proceeding relating to any right afforded to an employee pursuant**
27 **to this Chapter.**

28 **(3) Has testified or will testify in any inquiry or proceeding relating to**
29 **any right afforded to an employee pursuant to this Chapter.**

1 **§665. Complaint procedure**

2 **A. An employee who in good faith believes that her employer is in**
3 **violation of this Chapter shall submit written notice of the alleged violation to**
4 **the employer. An employer who receives such written notice from an employee**
5 **shall have sixty days from receipt of the notice to investigate the matter and**
6 **remedy any violation of this Chapter. If an employer remedies the violation in**
7 **a manner that complies with the statute and within the time provided herein,**
8 **the employee may not bring any action against the employer pursuant to this**
9 **Chapter except as provided in Subsections B and C of this Section.**

10 **B. If an employer fails to resolve the dispute to the satisfaction of such**
11 **employee within the time provided herein, the employee may file a complaint**
12 **with the commission requesting an investigation of the complaint pursuant to**
13 **R.S. 23:301.**

14 **C. If the commission finds evidence of discriminatory, retaliatory or**
15 **other adverse employment action on the part of the employer in violation of this**
16 **Chapter but is unable to resolve or mediate the dispute, or fails to render a**
17 **decision as to the dispute, or issues a finding of no discrimination on the part of**
18 **the employer, the employee may institute a civil suit in the Nineteenth Judicial**
19 **District Court.**

20 **§666. Damages**

21 **A. An employer who violates the provisions of this Chapter shall be**
22 **liable to the affected employees in the amount of the employee's unpaid wages**
23 **and reasonable attorney fees and costs.**

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

27 **C. In cases where suit is filed in the district court, no monetary relief**
28 **may be awarded the employee for losses incurred between the date that the**
29 **district court rendered its final judgment and the date upon which all appeals**

1 of that judgment have been exhausted.

2 D. Interim earnings by the employee discriminated against shall operate
3 to reduce the monetary relief otherwise allowable under this Chapter.

4 E. Nothing in this Chapter prevents the settlement of a claim by
5 agreement of the employer and employee for a lesser amount than the employee
6 alleges the employee is due.

7 F. An employee found by a court to have brought a frivolous claim
8 under this Chapter shall be held liable to the employer or any agent of the
9 employer who was named a defendant in the suit, or both, for reasonable
10 damages, reasonable attorney fees, and court costs incurred as a result of the
11 claim.

12 §667. Limitation of actions

13 A. Any action filed in the Nineteenth Judicial District Court to recover
14 unpaid wages or any other form of relief for a violation of this Chapter shall be
15 commenced within one year of the date that an employee is aware or should
16 have been aware that the employee's employer is in violation of this Chapter.

17 B. This one-year prescriptive period shall be suspended during the
18 sixty-day period allowed the employer by this Chapter to respond to the
19 employee's written notice, during the pendency of any administrative review or
20 investigation of the employee's claim by the commission or the United States
21 Department of Labor, or both.

22 §668. Records to be kept by employers

23 An employer subject to this Chapter shall create and preserve records
24 reflecting the name, address, and position of each employee, and all wages paid
25 to each employee. These records shall be preserved for a period of not less than
26 three years from the employee's last date of employment with the employer.

27 §669. Supplemental application

28 This Chapter is supplemental and is not intended to supercede any
29 provision provided for in Chapter 3-A of this Title, the "Louisiana Employment

1 **Discrimination Act", which prohibits discrimination based upon sex regardless**
 2 **of whether the employer is a state entity, a private business, or other employer.**

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

DIGEST

Murray (SB 153)

Proposed law provides that a woman performing public service for the state is entitled to be paid the same compensation as is paid to a man who performs the same service and that a distinction in compensation may not be made because of sex.

Proposed law defines "employee" as both:

- (1) Any individual employed to work 40 or more hours a week.
- (2) Any female individual employed by the employer.

Proposed law defines "employer" as any department, office, division, agency, commission, board, committee, or other organizational unit of the state.

Proposed law makes it unlawful for 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 in the same establishment.

Proposed law allows exceptions for instances when 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 business purpose.

Proposed law provides that the legitimate business purpose may serve as an exception unless the employee can show that some alternative employment 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. Further declares it unlawful for a person to discharge or discriminate 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 it shall be unlawful for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided under proposed law. It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, or aiding or encouraging any person to exercise his or her rights under proposed law.

Proposed law provides that an employee who believes that her employer has violated a provision of proposed law may provide written notice to the employer of the violation. Provides that an employer who receives written notice of a violation shall have 60 days to remedy the violation. Further provides that if the employer does not remedy the violation within the 60 days, the employee may bring an action against the employer with the Human Rights Commission.

Proposed 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 within 120 days, the employee may institute a civil suit in the 19th Judicial District Court.

Proposed law provides that an employer in violation of the provisions of proposed law may be liable for damages inclusive of unpaid wages and reasonable attorney fees and costs.

Proposed law provides that monetary relief for a violation of proposed law is limited to a 36-month period prior to the employee's written notice. Provides that said monetary relief cannot be awarded for losses incurred between the time of the district court's final decision and the final determination of any higher appellate court, as the case may be.

Proposed law provides that interim earnings by the employee shall reduce the amount of damages. 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 about the violation. Proposed law provides for a suspension of this period during the 60-day period in which the employer has to respond to the employee's written notice and during the pendency of any administrative review or investigation by the commission or the U.S. Dept. of Labor.

Proposed law requires employers to make and preserve records that document names, addresses, positions of employees, and their wages. The records shall be preserved for not less than three years.

Provides that proposed law shall not supercede present law prohibiting discrimination based on sex.

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

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

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the original bill

1. Makes it unlawful for an employer who employs 15 or more employees 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 in the same establishment.
2. 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 within 120 days, the employee may institute a civil suit in a district court of competent jurisdiction.
3. Deletes provisions relative to the inclusion of a copy of the written notice in such suit.
4. Suspends the one year prescriptive period during the 90-day period in which the employer has to respond to the employee's written notice and during the

pendency of any administrative review or investigation by the commission or the U.S. Dept. of Labor.

Senate Floor Amendments to engrossed bill

1. Limits applicability of proposed law to women employed full-time by the state or any organizational unit of the state.
2. Eliminated any role of organized labor in proposed law.
3. Requires any civil suit to be filed in the 19th Judicial District Court.
4. Eliminated liquidated damages.
5. Specified that proposed law does not supercede present law.