

Regular Session, 2012

SENATE BILL NO. 189

BY SENATOR DORSEY-COLOMB

EMPLOYMENT. Enacts the Louisiana Equal Pay for Women Act. (8/1/12)

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AN ACT

To enact Part II of Chapter 6 of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:661 through 668, relative to payment of wages; to provide for definitions; to provide for prohibited acts constituting unequal pay; 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. Part II of Chapter 6 of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:661 through 668, is hereby enacted to read as follows:

PART II. LOUISIANA EQUAL PAY FOR WOMEN ACT

§661. Short title; citation

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

§662. Declaration of public policy

The public policy of this state is declared to be that the practice of paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable

1 requirements unjustly discriminates against the person receiving the lesser rate.
2 It is therefore declared to be the policy of this state through the exercise of its
3 police power to correct and, as rapidly as possible, to eliminate discriminatory
4 wage practices based on sex.

5 §663. Definitions

6 As used in this Part, the following terms shall have the definitions
7 ascribed below unless the context indicates otherwise:

8 (1) "Employee" means any individual permitted to work by an
9 employer.

10 (2) "Employer" means an individual, partnership, corporation,
11 association, business, trust, person, labor organization as defined in this Part,
12 or entity for whom four or more employees are gainfully employed within the
13 state and includes the state of Louisiana, any state officer, any department or
14 agency, any unit of local government, and any school district.

15 (3) "Labor organization" means any organization which exists for the
16 purpose, in whole or in part, of collective bargaining or of dealing with
17 employers concerning grievances, terms or conditions of employment, or other
18 mutual aid or protection in connection with employment.

19 §664. Prohibited acts

20 A. No employer may discriminate against an employee on the basis of
21 sex by paying wages to an employee at a rate less than that of another employee
22 for the same or substantially similar work on jobs in which their performance
23 requires equal skill, effort, education, and responsibility and which are
24 performed under similar working conditions including time worked in the
25 position.

26 B. No labor organization or its agent representing employees or an
27 employer shall cause or attempt to cause an employer to discriminate against
28 an employee in violation of this Act.

29 C. Nothing in Subsection A or B of this Section shall prohibit the

1 payment of different wage rates to employees where such payment is made
2 pursuant to any of the following:

3 (1) A seniority system.

4 (2) A merit system.

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

7 (4) A differential based on a bona fide factor other than sex, such as
8 education, training, or experience, except that this Paragraph shall only apply
9 if:

10 (a) The employer demonstrates that such factor is job-related with
11 respect to the position in question; or

12 (b) The employer demonstrates that it furthers a legitimate business
13 purpose, except if the employee demonstrates that an alternative employment
14 practice exists that would serve the same business purpose without producing
15 such differential and that the employer has refused to adopt such alternative
16 practice and such factor was actually applied and used reasonably in light of the
17 asserted justification.

18 D. An employer who is paying wages in violation of this Part may not,
19 to comply with this Part, reduce the wages of any other employee.

20 E. It shall be unlawful for any person to discharge or in any other
21 manner discriminate against any individual because the individual:

22 (1) Has filed any charge or has instituted or caused to be instituted any
23 proceeding under or related to this Part.

24 (2) Has given or is about to give any information in connection with any
25 inquiry or proceeding relating to any right provided under this Part.

26 (3) Has testified or is about to testify in any inquiry or proceeding
27 relating to any right provided under this Part.

28 **§665. Complaint procedure**

29 **A. An employee who believes that an employer is in violation of this Part**

1 shall submit written notice of the violation to the employer. An employer who
2 receives such written notice from an employee shall have ninety days from
3 receipt of the notice to remedy any violation of this Part. If an employer
4 remedies the violation within the time provided herein, the employee may not
5 bring any action against the employer under this Part.

6 B. If an employer fails to remedy a violation of this Part within the time
7 provided herein, the employee may institute a civil suit in a district court of
8 competent jurisdiction.

9 §666. Liquidated damages

10 A. An employer who violates the provisions of this Part shall be liable
11 to the affected employees in the amount of their unpaid wages and an additional
12 amount of one-half of unpaid wages in liquidated damages as well as reasonable
13 attorney fees and costs.

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

17 C. The award of monetary relief shall be limited to those violations
18 which have occurred within a thirty-six month period prior to the institution of
19 a civil suit in a district court of competent jurisdiction.

20 D. Interim earnings by the employee discriminated against shall operate
21 to reduce the monetary relief otherwise allowable.

22 E. Nothing in this Part prevents the settlement of a claim by agreement
23 of the employer and employee for a lesser amount.

24 F. An employee found by a court to have brought a frivolous claim
25 under this Part shall be held liable to the defendant for reasonable damages
26 incurred as a result of the claim, reasonable attorney fees, and court costs.

27 §667. Limitation of actions

28 Any action to recover unpaid wages and liquidated damages based on a
29 violation as provided for in this Part must be commenced within one year of the

1 **date that an employee knows that his employer is in violation of this Part.**

2 **§668. Records to be kept by employers**

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

7 Section 2. The Louisiana State Law Institute is hereby authorized and requested to
 8 designate R.S. 23:631 through 659 as "Part I. General Provisions."

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

DIGEST

Proposed law enacts the "Louisiana Equal Pay for Women Act".

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.

Proposed law defines certain terms used within proposed law, including "employee" and "labor organization".

Proposed law makes it unlawful for an employer who employs four 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.

Proposed law makes it unlawful for a labor organization or its agent 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 business purpose.

Proposed law provides that the legitimate business purpose may serve as an exception unless the employee can show that some alternative business 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 any other employee's pay in order to comply with proposed law. Proposed law 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 an employee who believes that his employer has violated a provision of proposed law shall provide written notice to the employer of the violation.

Proposed law provides that an employer who receives written notice of a violation shall have 90 days to remedy the violation. Proposed law further provides that if the employer remedies the violation within 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 in violation of the provisions of proposed law may be liable for damages inclusive of unpaid 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 provides that monetary relief for a violation of proposed law is limited to a 36-month period prior to the filing of the action in a district court of competent jurisdiction. Proposed law provides that interim earnings by the employee shall reduce the amount of damages. Proposed law 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 requires employers to make and preserve records that document names, addresses, occupations of employees, and their wages. The records shall be preserved for not less than three years.

Effective August 1, 2012.

(Adds R.S. 23:661-668)