

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 402

3 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

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10 AN ACT

11 RELATING TO EMPLOYMENT; ENACTING THE FAIR PAY FOR WOMEN ACT;
12 PROHIBITING WAGE DISCRIMINATION BASED ON AN EMPLOYEE'S SEX;
13 PROHIBITING RETALIATION FOR ASSERTING A CLAIM PURSUANT TO THE
14 FAIR PAY FOR WOMEN ACT; PROVIDING PENALTIES.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. SHORT TITLE.--This act may be cited as the
18 "Fair Pay For Women Act".

19 SECTION 2. DEFINITIONS.--As used in the Fair Pay for
20 Women Act:

- 21 A. "commission" means the human rights commission;
22 B. "director" means the chief of the human rights
23 bureau of the labor relations division of the workforce
24 solutions department;
25 C. "employ" means suffer or permit to work;

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1 D. "employee" means any individual employed by an
2 employer;

3 E. "employer" means a person employing four or more
4 employees and any person acting for an employer;

5 F. "unpaid wage" means the difference between the
6 wages paid to the employee and the wages that would have been
7 paid to the employee had the discrimination not occurred; and

8 G. "wage" means compensation for performance of
9 services by an employee for an employer whether paid by the
10 employer or another person, including cash value of all
11 compensation paid in any medium other than cash.

12 SECTION 3. PROHIBITION ON PAYING EMPLOYEES LESS FOR SAME
13 WORK.--

14 A. No employer shall discriminate, within any
15 establishment in which such employees are employed, between
16 employees on the basis of sex by paying wages to employees in
17 the establishment at a rate less than the rate that the
18 employer pays wages to employees of the opposite sex in the
19 establishment for equal work on jobs the performance of which
20 requires equal skill, effort and responsibility and that are
21 performed under similar working conditions, except where the
22 payment is made pursuant to a:

23 (1) seniority system;

24 (2) merit system; or

25 (3) system that measures earnings by quantity

1 or quality of production.

2 B. An employer shall not reduce the wage of an
3 employee to comply with this section.

4 C. No agreement between an employer and an employee
5 for a specific wage in violation of the Fair Pay for Women Act
6 shall prevent the employee from raising a claim based on a
7 violation of the Fair Pay for Women Act.

8 SECTION 4. GRIEVANCE PROCEDURE.--

9 A. A person claiming to be aggrieved by an unlawful
10 discriminatory practice in violation of the Fair Pay for Women
11 Act may:

12 (1) maintain an action to establish liability
13 and recover damages and injunctive relief in any court of
14 competent jurisdiction by any one or more employees on behalf
15 of the employee or employees or on behalf of other employees
16 similarly situated; or

17 (2) seek relief under the Human Rights Act
18 pursuant to the process set out in Sections 28-1-10 through
19 28-1-13 NMSA 1978.

20 B. The court in any action brought under this
21 section shall, in addition to any judgment awarded to the
22 plaintiff or plaintiffs, allow costs of the action and
23 reasonable attorney fees to be paid by the defendant. In any
24 proceedings brought pursuant to the provisions of this section,
25 the employee shall not be required to pay any filing fee or

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1 other court costs necessarily incurred in such proceedings.

2 C. The court in any action brought under this
3 section may order appropriate injunctive relief, including
4 requiring an employer to post in the place of business a notice
5 describing violations by the employer as found by the court or
6 a copy of a cease and desist order applicable to the employer.

7 D. An action arising under the Fair Pay for Women
8 Act shall be initiated within six years from the date of the
9 discovery of the violation.

10 E. A person claiming to be aggrieved by an unlawful
11 discriminatory practice in violation of the Fair Pay for Women
12 Act need not exhaust administrative remedies.

13 F. The initiation of an administrative process
14 under the Human Rights Act pursuant to the process set out in
15 Sections 28-1-10 through 28-1-13 NMSA 1978 shall toll the
16 statute of limitations for initiating a claim under the Fair
17 Pay for Women Act.

18 **SECTION 5. RETALIATION PROHIBITED.**--It is a violation of
19 the Fair Pay for Women Act for an employer or any other person
20 to discharge, demote, deny promotion to or in any other way
21 discriminate against an employee in the terms or conditions of
22 employment in retaliation for the person asserting a claim or
23 right pursuant to the Fair Pay for Women Act or assisting
24 another person to do so, or for informing another person about
25 employment rights or other rights provided by law.

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1 SECTION 6. ENFORCEMENT--PENALTIES--REMEDIES.--

2 A. An employer who violates a provision of the Fair
3 Pay for Women Act shall be liable to the affected employee for
4 damages and equitable relief, including employment,
5 reinstatement and promotion. Damages shall be calculated on
6 the basis of:

7 (1) the affected employee's unpaid wages and
8 the damages from retaliation;

9 (2) all other actual damages; and

10 (3) treble damages.

11 B. The court may, in its sound discretion, not
12 award treble damages or may award any amount thereof not to
13 exceed the amount specified in this section if the employer
14 shows to the satisfaction of the court that the act or omission
15 giving rise to such action was in good faith and that the
16 employer had reasonable grounds for believing that the
17 employer's act or omission was not a violation of the Fair Pay
18 for Women Act.

19 C. An employer who violates a provision of the Fair
20 Pay for Women Act may also be liable to the employee for
21 punitive damages.

22 D. Recovery of unpaid wages is limited to six years
23 prior to the date of the last violation of the Fair Pay for
24 Women Act.