

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 36 Session of
2023

INTRODUCED BY TARTAGLIONE, HAYWOOD, HUGHES, FONTANA, KEARNEY,
KANE, SCHWANK, COLLETT, DILLON, STREET, COSTA, CAPPELLETTI
AND SANTARSIERO, JANUARY 18, 2023

REFERRED TO LABOR AND INDUSTRY, JANUARY 18, 2023

AN ACT

1 Amending the act of December 17, 1959 (P.L.1913, No.694),
2 entitled "An act prohibiting discrimination in rate of pay
3 because of sex; conferring powers and imposing duties on the
4 Department of Labor and Industry; and prescribing penalties,"
5 further providing for definitions, for wage rates and for
6 collection of unpaid wages.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 2(a) of the act of December 17, 1959
10 (P.L.1913, No.694), known as the Equal Pay Law, is amended and
11 the section is amended by adding subsections to read:

12 Section 2. Definitions.--(a) The term "employee," as used in
13 this act, shall mean any person employed for hire in any
14 [lawful] business, industry, trade or profession, or in any
15 other [lawful] enterprise in which individuals are gainfully
16 employed; including individuals employed by the Commonwealth or
17 any of its political subdivisions, including public bodies[:
18 Provided, however, That the term "employee" as used in this act
19 shall not apply to any person or persons who is or are subject

1 to section 6 of the Federal Fair Labor Standards Act (Act of
2 June 25, 1938, as amended)].

3 * * *

4 (e.1) The term "wages" includes all earnings of an employe,
5 regardless of whether determined on time, task, piece,
6 commission or other method of calculation, including salaries
7 based on annual or other basis. The term "wages" also includes
8 fringe benefits, wage supplements or other compensation, whether
9 payable by the employer from funds of the employer or from
10 amounts withheld from the employe's pay by the employer.

11 (e.2) The term "comparable work" shall mean work that is
12 substantially similar in that it requires substantially similar
13 skill, effort and responsibility and is performed under similar
14 working conditions. A job title or job description alone shall
15 not determine comparability.

16 (e.3) The term "working conditions" shall include the
17 circumstances customarily taken into consideration in setting
18 salary or wages, including, but not limited to, reasonable shift
19 differentials, physical surroundings and hazards encountered by
20 employes performing a job.

21 * * *

22 Section 2. Section 3 of the act is amended to read:

23 Section 3. Wage Rates.--(a) No employer having employes
24 subject to any provisions of this section shall discriminate[,
25 within any establishment in which such employes are employed,]
26 between employes on the basis of sex by paying wages to employes
27 [in such establishment] at a rate less than the rate at which
28 [he] the employer pays wages to employes of the opposite sex [in
29 such establishment] for [equal] comparable work [on jobs, the
30 performance of which, requires equal skill, effort, and

1 responsibility, and which are performed under similar working
2 conditions], except where [such payment is made pursuant to (1)
3 a seniority system; (2) a merit system; (3) a system which
4 measures earnings by quantity or quality of production; or (4) a
5 differential based on any other factor other than sex: Provided,
6 That any] the employer demonstrates that:

7 (1) The wage differential is based upon one or more of the
8 following factors:

9 (i) A bona fide seniority system. Time spent on leave due to
10 a pregnancy-related condition and protected parental, family and
11 medical leave shall not reduce seniority.

12 (ii) A bona fide merit system.

13 (iii) A bona fide system which measures earnings by quantity
14 or quality of production or sales.

15 (iv) A bona fide factor other than sex, including education,
16 training or experience.

17 (2) Each factor relied upon is applied reasonably.

18 (3) The one or more factors relied upon account for the
19 entire wage differential.

20 (4) The job title or job description alone does not
21 determine if two jobs are comparable.

22 (a.1) Any employer who is paying a wage rate differential in
23 violation of [this] subsection (a) shall not, in order to comply
24 with the provisions of [this] subsection (a), reduce the wage
25 rate of any employe.

26 (a.2) The bona fide factor defense described under
27 subsection (a) (1) (iv):

28 (1) Shall apply only if the employer demonstrates that the
29 bona fide factor:

30 (i) is not based upon or derived from a sex-based

1 differential in compensation;

2 (ii) is job-related with respect to the position in
3 question; and

4 (iii) is consistent with business necessity. For purposes of
5 this subparagraph, "business necessity" means an overriding
6 legitimate business purpose such that the factor relied upon
7 effectively fulfills the business purpose it is supposed to
8 serve.

9 (2) Shall not apply if the employe demonstrates that an
10 alternative business practice exists that would serve the same
11 business purpose without producing the wage differential.

12 (b) No labor organization, or its agents, representing
13 employes of an employer having employes subject to any
14 provisions of this section, shall cause or attempt to cause such
15 an employer to discriminate against an employe in violation of
16 subsection (a) of this section.

17 Section 3. Section 5(b) of the act is amended and the
18 section is amended by adding a subsection to read:

19 Section 5. Collection of Unpaid Wages.--* * *

20 (a.1) The Attorney General may also bring an action to
21 collect unpaid wages on behalf of one or more employes, as well
22 as damages, equitable relief and attorney fees and costs. The
23 costs and attorney fees shall be paid to the Commonwealth. The
24 Attorney General shall not be required to pay any filing fee or
25 other cost in connection with the action.

26 (b) Any action pursuant to the provisions of this act must
27 be brought within two years from the date upon which the
28 violation complained of occurs[.] unless the violation is a
29 wilful violation, in which case the action must be brought
30 within three years from the date of the violation. For the

1 purposes of this section, a violation occurs when:

2 (1) a discriminatory wage decision or practice is adopted;

3 (2) an individual is subject to a discriminatory wage

4 decision or practice; or

5 (3) an individual is affected by application of a

6 discriminatory wage decision or practice, including each time

7 wages paid result, in whole or in part, from a discriminatory

8 wage decision or practice.

9 Section 4. This act shall take effect in 30 days.