

1 S.57

2 Introduced by Senators Fox, Ashe, Ayer, Baruth, Campbell, Cummings,
3 Galbraith, Lyons, MacDonald, McCormack, Mullin, Pollina,
4 Snelling, White, and Zuckerman

5 Referred to Committee on

6 Date:

7 Subject: Labor; equal pay; workplace protections

8 Statement of purpose of bill as introduced: This bill proposes to clarify and
9 strengthen existing laws regarding equal pay and the prohibition of
10 discrimination in employment, housing, and public accommodations.

11 An act relating to equal pay

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. FINDINGS

14 The General Assembly finds:

15 (1) Pay inequity has been illegal since President Kennedy signed the
16 Equal Pay Act in 1963 and Vermont outlawed pay discrimination in the Fair
17 Employment Act the same year. In 1965, President Johnson signed Executive
18 Order 11246, which requires federal contractors to certify their compliance
19 with federal nondiscrimination laws, including the Equal Pay Act.

1 (2) Notwithstanding these laws and notwithstanding the fact that women
2 today make up nearly half of the workforce, pay inequity remains a persistent
3 problem. Nationally, women earn roughly 78 percent of what their male
4 counterparts earn. In Vermont, women fare only slightly better, earning
5 roughly 84 cents per dollar earned by men, according to the National
6 Partnership for Women and Families.

7 (3) Pay inequity affects all households. Nationally nearly 40 percent of
8 mothers bring home the majority of their family's earnings, and nearly 63
9 percent of mothers bring home at least a quarter of their family's income.

10 (4) Research has shown that pay inequity may arise even if an employer
11 does not specifically intend to discriminate against workers based on sex. For
12 example, some employees may not have a fair opportunity to negotiate pay
13 because they lack the opportunity to know what similarly-situated employees
14 earn. Other employees may avoid or be channeled into lower-paying
15 assignments or career paths that are viewed as more compatible with family
16 needs. Other employees may temporarily drop out of the workforce because
17 there is insufficient workplace flexibility; when such employees do return to
18 the workforce, they may be unable to catch up to employees performing the
19 same work.

20 (5) A number of European countries, such as Great Britain, France, and
21 Germany, have successfully implemented laws that grant employees the right

1 to ask for flexible workplace arrangements without fear of retaliation and that
2 require employers to consider such requests in good faith. Employers with
3 flexible, family-friendly policies tend to have lower rates of absenteeism,
4 lower rates of employee turnover, and higher worker productivity.

5 (6) Research has also shown that short paid parental leaves tend to keep
6 women in the labor force longer and that women who take such leaves tend not
7 to earn less than their male counterparts.

8 Sec. 2. 21 V.S.A. § 495 is amended to read:

9 § 495. UNLAWFUL EMPLOYMENT PRACTICE

10 (a) It shall be unlawful employment practice, except where a bona fide
11 occupational qualification requires persons of a particular race, color, religion,
12 national origin, sex, sexual orientation, gender identity, ancestry, place of birth,
13 age, or physical or mental condition:

14 * * *

15 ~~(5) For any employer, employment agency, or labor organization to~~
16 ~~discharge or in any other manner discriminate against any employee because~~
17 ~~such employee has lodged a complaint of discriminatory acts or practices or~~
18 ~~has cooperated with the attorney general or a state's attorney in an~~
19 ~~investigation of such practices, or is about to lodge a complaint or cooperate in~~
20 ~~an investigation, or because such employer believes that such employee may~~

1 ~~lodge a complaint or cooperate with the attorney general or state's attorney in~~
2 ~~an investigation of discriminatory acts or practices;~~

3 ~~(6)~~ For any employer, employment agency, labor organization, or
4 person seeking employees to discriminate against, indicate a preference or
5 limitation, refuse properly to classify or refer, or to limit or segregate
6 membership, on the basis of a person's having a positive test result from an
7 HIV-related blood test;

8 ~~(7)~~(6) For any employer, employment agency, labor organization, or
9 person seeking employees to request or require an applicant, prospective
10 employee, employee, prospective member, or member to have an HIV-related
11 blood test as a condition of employment or membership, classification,
12 placement, or referral;

13 ~~(8)~~(7) For any employer, employment agency, labor organization, or
14 person seeking employees to discriminate between employees on the basis of
15 sex by paying wages to employees of one sex at a rate less than the rate paid to
16 employees of the other sex for equal work that requires equal skill, effort, and
17 responsibility, and is performed under similar working conditions. An
18 employer who is paying wages in violation of this section shall not reduce the
19 wage rate of any other employee in order to comply with this subsection.

20 (A) An employer may pay different wage rates under this subsection
21 when the differential wages are made pursuant to:

1 (i) A seniority system.

2 (ii) A merit system.

3 (iii) A system in which earnings are based on quantity or quality
4 of production.

5 (iv) ~~Any factor other than sex~~ A differential system based upon a
6 bona fide factor other than sex, including education, training, or experience.

7 An employer asserting that differential wages are paid pursuant to this
8 subdivision shall demonstrate that the factor is not based on or derived from a
9 sex-based differential in compensation and is related to the employment and
10 consistent with a business necessity. An employee may demonstrate that an
11 alternative employment practice exists that would serve the employment
12 purpose without producing a differential compensation and that the employer
13 has refused to adopt the alternative practice.

14 (B) No employer may do any of the following:

15 (i) Require, as a condition of employment, that an employee
16 refrain from disclosing the amount of his or her wages or from inquiring about
17 or discussing the wages of other employees.

18 (ii) Require an employee to sign a waiver or other document that
19 purports to deny the employee the right to disclose the amount of his or her
20 wages or to inquire about or discuss the wages of other employees.

1 certification of compliance with the equal pay provisions of 21 V.S.A.
2 § 495(a)(7).

3 (b) A contractor subject to this section shall maintain and make available
4 its books and records to the contracting agency and the Attorney General so
5 that either may determine whether the contractor is in compliance with this
6 section.

7 Sec. 4. 21 V.S.A. § 305 is amended to read:

8 § 305. NURSING MOTHERS IN THE WORKPLACE

9 * * *

10 (c) An employer shall not retaliate or discriminate against an employee
11 who exercises ~~the right~~ or attempts to exercise the rights provided under this
12 section. The provisions against retaliation in subdivision 495(a)(8) of this title
13 and the penalty and enforcement provisions of section 495b of this title shall
14 apply to this section.

15 * * *

16 Sec. 5. 21 V.S.A. § 472b is amended to read:

17 § 472b. TOWN MEETING LEAVE; EMPLOYEES; STUDENTS

18 (a) Subject to the essential operation of a business or entity of state or local
19 government, which shall prevail in any instance of conflict, an employee shall
20 have the right to take unpaid leave from employment under this section or
21 subsection 472(b) of this title for the purpose of attending his or her annual

1 town meeting, provided the employee notifies the employer at least seven days
2 prior to the date of the town meeting. ~~An employer shall not discharge or in~~
3 ~~any other manner retaliate against an employee for exercising the right~~
4 ~~provided by this section.~~

5 * * *

6 Sec. 6. 21 V.S.A. § 309 is added to read:

7 § 309. FLEXIBLE WORKING ARRANGEMENTS

8 (a) An employee may not more than twice per calendar year request a
9 flexible working arrangement that meets the needs of the employer and
10 employee.

11 (b) As used in this section, “flexible working arrangement” means
12 intermediate or long-term changes in the employee’s regular working
13 arrangements including changes in the number of days or hours worked,
14 changes in the time the employee arrives at or departs from work, work from
15 home, or job-sharing. “Flexible working arrangement” does not include
16 vacation or another form of employee leave.

17 (c) Within 30 days of receiving a request for a flexible working
18 arrangement, the employer shall meet with the employee to discuss the request
19 in good faith. The employer and employee may propose alternative
20 arrangements during the meeting.

1 (d) Within 14 days of the meeting described in subsection (c) of this
2 section, the employer shall notify the employee of the decision regarding the
3 request. If the request was submitted in writing, the employer shall state any
4 complete or partial denial of the request in writing.

5 (e) The employer shall grant the employee's request for a flexible working
6 arrangement unless doing so is inconsistent with its business operations or its
7 legal or contractual obligations.

8 (f) This section shall not diminish any rights under this chapter or pursuant
9 to a collective bargaining agreement.

10 (g) An employer shall not retaliate against an employee exercising his or
11 her rights under this section. The provisions against retaliation in subdivision
12 495(a)(8) of this title and the penalty and enforcement provisions of section
13 495b of this title shall apply to this section.

14 Sec. 7. 21 V.S.A. § 473 is amended to read:

15 § 473. RETALIATION PROHIBITED

16 An employer shall not discharge or in any other manner retaliate against an
17 employee ~~because:~~

18 ~~(1) the employee lodged a complaint of a violation of a provision of this~~
19 ~~subchapter; or~~

20 ~~(2) the employee has cooperated with the attorney general or a state's~~
21 ~~attorney in an investigation of a violation of a provision of this subchapter; or~~

1 ~~(3) the employer believes that the employee may lodge a complaint or~~
2 ~~cooperate in an investigation of a violation of a provision of who exercises or~~
3 ~~attempts to exercise his or her rights under this subchapter. The provisions~~
4 ~~against retaliation in subdivision 495(a)(8) of this title and the penalty and~~
5 ~~enforcement provisions of section 495b of this title shall apply to this~~
6 ~~subchapter.~~

7 Sec. 8. 21 V.S.A. § 474 is amended to read:

8 § 474. PENALTIES AND ENFORCEMENT

9 ~~(a) The attorney general or a state's attorney may enforce the provisions of~~
10 ~~this subchapter by bringing a civil action for temporary or permanent~~
11 ~~injunctive relief, economic damages, including prospective lost wages for a~~
12 ~~period not to exceed one year, and court costs. The attorney general or a~~
13 ~~state's attorney may conduct an investigation to obtain voluntary conciliation~~
14 ~~of an alleged violation. Such investigation shall not be a prerequisite to the~~
15 ~~bringing of a court action.~~

16 ~~(b) As an alternative to subsection (a) of this section, an employee entitled~~
17 ~~to leave under this subchapter who is aggrieved by a violation of a provision of~~
18 ~~this subchapter may bring a civil action for temporary or permanent injunctive~~
19 ~~relief, economic damages, including prospective lost wages for a period not to~~
20 ~~exceed one year, attorney fees and court costs. The provisions against~~
21 ~~retaliation in subdivision 495(a)(8) of this title and the penalty and~~

1 enforcement provisions of section 495b of this title shall apply to this
2 subchapter.

3 ~~(e)~~(b) An employer may bring a civil action to recover compensation paid
4 to the employee during leave, except payments made for accrued sick leave or
5 vacation leave; and court costs to enforce the provisions of subsection 472(h)
6 of this title.

7 Sec. 9. 21 V.S.A. § 710 is amended to read:

8 § 710. UNLAWFUL DISCRIMINATION

9 * * *

10 (b) No person shall discharge or discriminate against an employee from
11 employment because such employee asserted or attempted to assert a claim for
12 benefits under this chapter or under the law of any state or under the United
13 States.

14 * * *

15 (f) The provisions against retaliation in subdivision 495(a)(8) of this title
16 and the penalty and enforcement provisions of section 495b of this title shall
17 apply to this subchapter.

1 Sec. 11. 9 V.S.A. § 4503 is amended to read:

2 § 4503. UNFAIR HOUSING PRACTICES

3 (a) It shall be unlawful for any person:

4 * * *

5 (5) ~~To coerce, intimidate, threaten, or interfere with any person in the~~
6 ~~exercise or enjoyment of any right granted or protected by this chapter or for~~
7 ~~having filed a charge, testified, or cooperated in any investigation or~~
8 ~~enforcement action pursuant to chapter 139 or 141 of this title. [Repealed.]~~

9 * * *

10 Sec. 12. 9 V.S.A. § 4506 is amended to read:

11 § 4506. ENFORCEMENT; CIVIL ACTION; RETALIATION PROHIBITED

12 * * *

13 (e) Retaliation prohibited. A person shall not retaliate against, coerce,
14 intimidate, threaten, or interfere with an individual who:

15 (1) has opposed any act or practice that is prohibited under sections
16 4502 or 4503 of this title;

17 (2) has lodged a complaint or has testified, assisted, or participated in
18 any manner with the Attorney General, a state's attorney, or the Human Rights
19 Commission in an investigation of acts or practices prohibited by chapter 139
20 of this title;

1 (3) is known by the person to be about to lodge a complaint, testify,
2 assist, or participate in any manner in an investigation of acts or practices
3 prohibited by chapter 139 of this title; or

4 (4) is believed by the person to have acted as described in subdivisions
5 (1) through (3) of this subsection.

6 Sec. 13. PAID FAMILY LEAVE STUDY COMMITTEE

7 (a) A Committee is established to study the issue of paid family leave in
8 Vermont and to make recommendations regarding whether and how paid
9 family leave may benefit Vermont citizens.

10 (b) The Committee shall examine:

11 (1) existing paid leave laws and proposed paid leave legislation in other
12 states;

13 (2) which employees should be eligible for paid leave benefits;

14 (3) the appropriate level of wage replacement for eligible employees;

15 (4) the appropriate duration of paid leave benefits;

16 (5) mechanisms for funding paid leave through employee contributions;

17 (6) administration of paid leave benefits;

18 (7) transitioning to a funded paid leave program; and

19 (8) any other issues relevant to paid leave.

20 (c) The Committee shall make recommendations including proposed
21 legislation to address paid family leave in Vermont.

1 (d) The Committee shall consist of the following members:

2 (1) two members of the House of Representatives chosen by the

3 Speaker;

4 (2) two members of the Senate chosen by the Committee on

5 Committees;

6 (3) two representatives from the business community, one appointed by

7 the Speaker and one by the Committee on Committees;

8 (4) two representatives from labor organizations, one appointed by the

9 Speaker and one by the Committee on Committees;

10 (5) two representatives appointed by the Governor;

11 (6) the Attorney General or designee;

12 (7) the Commissioner of Labor or designee;

13 (8) the Executive Director of the Vermont Commission on Women or

14 designee;

15 (9) the Executive Director of the Human Rights Commission; and

16 (10) one representative of the advocacy community appointed by the

17 Vermont Commission on Women.

18 (e) The Committee shall convene its first meeting on or before

19 September 1, 2013. The Commissioner of Labor or designee shall be

20 designated Chair of the Committee and shall convene the first and subsequent

21 meetings.

1 (f) The Committee shall report its findings and recommendations on or
2 before January 15, 2014 to the House Committee on General, Housing and
3 Military Affairs and the Senate Committee on Economic Development,
4 Housing and General Affairs.

5 (g) The Committee shall cease to function upon transmitting its report.

6 Sec. 14. EFFECTIVE DATE

7 This act shall take effect on July 1, 2013.