

Regular Session, 2006

HOUSE BILL NO. 144

BY REPRESENTATIVES HUNTER, DURAND, AND MONTGOMERY

EMPLOYMENT/WAGES: Creates the Louisiana Equal Pay for Women Act

1

AN ACT

2 To enact Part II of Chapter 6 of Title 23 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 23:661 through 669, relative to payment of wages; to provide for
4 definitions; to provide for prohibited acts constituting unequal pay; to require certain
5 records be kept by employers; to provide for relief; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

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

10 PART II. LOUISIANA EQUAL PAY FOR WOMEN ACT

11 §661. Short title; citation

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

14 §662. Declaration of public policy

15 The public policy of this state is declared to be that the practice of paying
16 wages to employees of one sex at a lesser rate than the rate paid to employees of the
17 opposite sex for comparable work on jobs which have comparable requirements
18 unjustly discriminates against the person receiving the lesser rate; leads to low
19 worker morale, high turnover, and frequent labor unrest; discourages workers paid
20 at the lesser wage rates from training for higher level jobs; curtails employment

1 opportunities, decreases workers' mobility, and increases labor cost; impairs
2 purchasing power and impairs maintenance of an adequate standard of living by such
3 workers and their families; prevents optimum utilization of the state's available labor
4 resources; threatens the well-being of citizens of this state; and adversely affects the
5 general welfare. It is therefore declared to be the policy of this state through the
6 exercise of its police power to correct and, as rapidly as possible, to eliminate
7 discriminatory wage practices based on sex.

8 §663. Definitions

9 As used in this Part, the following shall have the definitions ascribed below
10 unless the context indicates otherwise:

11 (1) "Commission" means the Louisiana Commission on Human Rights.
12 (2) "Employee" means any individual permitted to work by an employer.
13 (3) "Employer" means an individual, partnership, corporation, association,
14 business, trust, person, labor organization as defined in this Part, or entity for whom
15 four or more employees are gainfully employed within the state and includes the
16 state of Louisiana, any state officer, department or agency, any unit of local
17 government, and school district.

18 (4) "Labor Organization" means any organization which exists for the
19 purpose, in whole or in part, of collective bargaining or of dealing with employers
20 concerning grievances, terms or conditions of employment, or other mutual aid or
21 protection in connection with employment.

22 §664. Prohibited acts

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

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

4 C. Nothing in Subsection A or B of this Section shall prohibit the payment
5 of different wage rates to employees where such payment is made pursuant to the
6 following:

- 7 (1) A seniority system.
- 8 (2) A merit system.
- 9 (3) A system that measures earnings by quantity or quality of production.
- 10 (4) A differential based on a bona fide factor other than sex, such as
11 education, training, or experience, except that this clause shall only apply if:
12 (a) The employer demonstrates that such factor is job-related with respect
13 to the position in question; or
14 (b) The employer demonstrates that it furthers a legitimate business purpose,
15 except if the employee demonstrates that an alternative employment practice exists
16 that would serve the same business purpose without producing such differential and
17 that the employer has refused to adopt such alternative practice and such factor was
18 actually applied and used reasonably in light of the asserted justification.

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

21 E. It shall be unlawful for an employer to interfere with, restrain, or deny the
22 exercise of or attempt to exercise any right provided under this Part. It shall be
23 unlawful for any employer to discharge or in any other manner discriminate against
24 any individual for inquiring about, disclosing, comparing, or otherwise discussing
25 the employee's wages or the wages of any other employee, or aiding or encouraging
26 any person to exercise his or her right under this Part.

27 F. It shall be unlawful for any person to discharge or in any other manner
28 discriminate against any individual because the individual:

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

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

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

7 §665. Enforcement

8 The commission shall have the power and it shall be its duty to enforce the
9 provisions of this Part.

10 §666. Complaint procedure

11 An employee claiming to be aggrieved by a violation of R.S. 23:661 et seq.
12 may file a complaint with the commission requesting an investigation of the
13 complaint pursuant to R.S. 51:2257 et seq.

14 §667. Liquidated damages

15 A. An employer who violates the provisions of this Part shall be liable to the
16 affected employees in the amount of their unpaid wages, and an additional amount
17 of one-half of unpaid wages in liquidated damages as well as reasonable attorney
18 fees and cost.

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

22 C. The award of monetary relief shall be limited to those violations which
23 have occurred within a thirty-six-month period prior to the filing of a complaint with
24 the commission.

25 D. The complainant may not be awarded monetary relief for losses incurred
26 between the time of the commission's final determination and the final determination
27 by the district court or higher appellate court, as the case may be.

28 E. Interim earnings by the employee discriminated against shall operate to
29 reduce the monetary relief otherwise allowable.

1 F. Nothing in this Part prevents the settlement of a claim by agreement of the
2 employer and employee for a lesser amount.

3 §668. Limitation of actions

4 A. Any action to recover unpaid wages and liquidated damages based on a
5 violation of R.S. 23:661 et seq., must be commenced within one year of the date that
6 an employee knows that his employer is in violation of this Part.

7 B. This one-year period shall be suspended during the pendency of any
8 administrative review conducted by the commission.

9 §669. Records to be kept by employers

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

14 Section 2. The Louisiana State Law Institute is hereby authorized and requested to
15 designate R.S. 23:631 through 653 as "Part I. Payment of Employees".

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Hunter

HB No. 144

Abstract: This legislation creates 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 "commission" and "labor organization".

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.

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 an employee's pay in order to comply with proposed law. Proposed law makes it unlawful for an employer to interfere with the exercise of any right under 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 may file a complaint with the Louisiana Commission on Human Rights.

Proposed law provides that an employer in violation with the provisions of proposed law may be liable for damages inclusive of unpaid wages, an amount of 1/2 unpaid wages in liquidated damages, reasonable attorney fees, cost, 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 complaint. Proposed law provides that said monetary relief cannot be awarded for losses incurred between the time of the commission's final determination and the final determination by the district court or higher appellate court, as the case may be. 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 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 pendency of any review conducted by the commission.

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.

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

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Labor and Industrial Relations to the original bill.

1. Makes technical changes.
2. Provides for public policy of this state.
3. Provides for additional definitions.
4. Provides that the Louisiana Commission on Human Rights shall have the power and duty to enforce the provisions of proposed law.
5. Provides that an aggrieved employee may file a complaint with the commission.

6. Provides that an employer in violation with the provisions of proposed law may be liable for damages.
7. Provides for a period within which an employee can seek damages.
8. Provides that interim earnings by the employee shall reduce the amount of damages.
9. Provides for settlement between the employer and employee.
10. Provides for a prescriptive period.