

SB 207-FN – VERSION ADOPTED BY BOTH BODIES

03/13/14 0871s
03/13/14 0976s
05/22/14 1888EBA

2014 SESSION

14-2609
06/04

SENATE BILL ***207-FN***

AN ACT relative to paycheck equity.

SPONSORS: Sen. Larsen, Dist 15; Sen. D'Allesandro, Dist 20; Sen. Fuller Clark, Dist 21;
Sen. Gilmour, Dist 12; Sen. Hosmer, Dist 7; Sen. Kelly, Dist 10; Sen. Lasky, Dist
13; Sen. Pierce, Dist 5; Sen. Soucy, Dist 18; Sen. Watters, Dist 4; Sen. Woodburn,
Dist 1; Rep. Norelli, Rock 26; Rep. S. Chandley, Hills 22; Rep. Knowles, Hills 37;
Rep. Porter, Hills 1

COMMITTEE: Commerce

AMENDED ANALYSIS

This bill modifies provisions of law regarding pay equity.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to paycheck equity.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Discrimination in the Workplace; Definitions; Equal Pay. RSA 275:37 is repealed and
2 reenacted to read as follows:

3 275:37 Equal Pay.

4 I. No employer or person seeking employees shall discriminate between employees on the
5 basis of sex by paying employees of one sex at a rate less than the rate paid to employees of the other
6 sex for equal work that requires equal skill, effort, and responsibility and is performed under similar
7 working conditions, except where such payment is made pursuant to:

8 (a) A seniority system;

9 (b) A merit or performance-based system;

10 (c) A system which measures earnings by quantity or quality of production;

11 (d) Expertise;

12 (e) Shift differentials;

13 (f) A demonstrable factor other than sex, such as education, training, or experience.

14 II. An employer who is paying wages in violation of this section shall not reduce the wage
15 rate of any other employee in order to comply with this section.

16 2 Enforcement. Amend RSA 275:38 to read as follows:

17 275:38 Enforcement. The labor commissioner shall have the power and it shall be his *or her*
18 duty to enforce the provisions of this subdivision ***through appropriate actions in response to***
19 ***complaints.***

20 3 New Section; Non-Retaliation Provision. Amend RSA 275 by inserting after section 38 the
21 following new section:

22 275:38-a Non-Retaliation Provision.

23 I. No employer shall discharge or in any other manner discriminate against any employee
24 because he or she:

25 (a) Makes a charge, files any complaint, or institutes or causes to be instituted any
26 investigation, proceeding, hearing, or action under or related to this subdivision, including an
27 investigation conducted by the employer, or has testified or is planning to testify or has assisted or
28 participated in any manner in any such investigation, proceeding, hearing, or action.

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(b) Inquired about, discussed, or disclosed his or her wages or those of another employee.

II. This section shall not apply to any employee who has access to the wage information of other employees as a part of such employee's essential job functions who discloses the wages of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a complaint or charge or in furtherance of an investigation, proceeding, hearing, or action under RSA 275:41-a including an investigation conducted by the employer. Nothing in this section shall be construed to limit the rights of an employee provided under any other provision of law.

4 Penalties. Amend RSA 275:40 to read as follows:

275:40 Penalties. Any employer who violates ~~[any provision hereof, or who discharges or in any other manner discriminates against any employee because such employee has made a complaint to his employer, the labor commissioner, or any other person, or instituted, or caused to be instituted any proceedings under or related to this subdivision, or has testified or is about to testify in any such proceeding, shall be]~~ ***the provisions of RSA 275:37, RSA 275:38-a, or RSA 275:41-b shall be guilty of a violation if a natural person or guilty of a misdemeanor if any other person, and notwithstanding RSA 651:2, IV(a), subject to a fine of not more than \$2,500.***

5 Procedures for Hearings and Appeals. Amend RSA 275:41-a to read as follows:

275:41-a Procedures for Hearings and Appeals. In a claim under RSA 275:37, the commissioner shall notify the employer by serving a copy of such claim and an order to file with the commissioner within ~~[40]~~ **30** days from the receipt of such notice any objections to such claim specifying the grounds therefor. ~~[Any claim under this section shall be commenced within one year of the accrual thereof and not afterwards.]~~ Service may be by certified mail with return receipt. If objection is not made within ~~[40]~~ **30** days, the commissioner may order that payment be made in accordance with the claim. If requested, a hearing shall be afforded at which time any party may appear, with counsel if desired, and present evidence and cross examine opposing witnesses. Any party, at the party's own expense, may cause a record to be made of the hearing. A written decision shall be made within 30 days after the hearing stating the decision and specifying the facts and conclusions upon which the decision is based. If wages are found to be due, an order for payment shall be issued. Any party aggrieved by the decision may appeal to the superior court not later than 20 days thereof by petition, setting forth that the decision is erroneous, in whole or in part, and specifying the grounds upon which the decision is claimed to be in error. Upon the filing of an appeal, the commissioner shall transfer to the court the record of the proceeding or a certified copy thereof. The scope of review by the superior court shall be limited to questions of law. After hearing and upon consideration of the record, the court may affirm, vacate, or modify in whole or in part the decision of the commissioner, or may remand the matter to the commissioner for further findings. In the absence of a ~~[reasonable]~~ ***timely*** appeal, the decision and order shall be final, shall be entered upon the docket of the superior court at the request of the prevailing party, may be enforced as judgment of said court, and shall be a

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lien upon the property of the employer situated in the state for a period of 3 years from the time of the decision. It is a requirement of this subdivision for purposes of RSA 275:37 that a final order be immediately satisfied by the employer.

6 New Sections; Pay Disclosure; Data Collection. Amend RSA 275 by inserting after section 41-a the following new sections:

275:41-b Pay Disclosure.

I. No employer shall require the following as a condition of employment:

(a) That an employee refrain from disclosing the amount of his or her wages.

(b) That an employee sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages, salary, or paid benefits.

II. No employer shall discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages, salary, or paid benefits.

275:41-c Pay Equity Information. The commissioner shall make available on the department of labor website, and through any other forum that the department may use to distribute compensation differentials information, accurate information on compensation differentials, including statistics, explanations of employee rights, historical analyses of such differentials, instructions for employers on compliance, and any other information that will assist the public in understanding and addressing such differentials. The commissioner of labor and the commissioner of employment security shall jointly compile and produce such information.

275:41-d Notice Required. The commissioner shall make available on the department of labor website the following notice: "It is illegal in New Hampshire under both state and federal law to pay employees different wages for the same work based solely on sex. If you think that your employer has violated this provision, please contact the New Hampshire Department of Labor." This notice shall also include the address, phone number, and email address of department personnel to be contacted with complaints under this subdivision, as well as an Internet link to RSA 275:37.

7 Notification, Posting, and Records. Amend RSA 275:49, V-VI to read as follows:

V. Keep posted in a place accessible to his or her employees an abstract of this subdivision furnished by the commissioner which shall include information about the criteria for classifying an employee as an employee or as an independent contractor; ~~and~~

VI. Make such records of the persons employed by him or her, including wage and hour records, preserve such records for such periods of time, and make such reports therefrom to the commissioner, as the commissioner shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this subdivision[-]; *and*

VII. Keep posted in a place accessible to his or her employees the following: "It is illegal in New Hampshire under both state and federal law to pay employees different wages for the same work based solely on sex. If you think that your employer has violated this provision, please contact the New Hampshire Department of Labor." This notice shall

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1 *also include the address, phone number, and email address of department personnel to be*
2 *contacted with complaints under this subdivision, as well as an Internet link to RSA*
3 *275:37.*

4 8 Limitations of Actions. Amend RSA 275:41 to read as follows:

5 275:41 Limitation of Actions. Any action to recover unpaid wages and liquidated damages based
6 on violation of RSA 275:37, ~~[must]~~ **shall** be commenced within ~~[one year of the accrual thereof and~~
7 ~~not afterwards]~~ **3 years of discovery of the violation. No action brought under this section**
8 **shall include any violation that occurred more than 4 years prior to the commencement of**
9 **such action.**

10 9 Effective Date. This act shall take effect January 1, 2015.

LBAO
14-2609
12/11/13

SB 207-FN - FISCAL NOTE

AN ACT relative to paycheck equity.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation, **as introduced**, has a total fiscal impact of less than \$10,000 in each of the fiscal years 2014 through 2018.