

2016 Regular Session

SENATE BILL NO. 254

BY SENATORS MORRELL, BARROW, BISHOP AND CARTER

EMPLOYMENT. Provides that the Louisiana Equal Pay Act be applicable to men and private employers and requires government contractors to verify equal pay practices. (8/1/16)

AN ACT

To amend and reenact Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:661 through 669, relative to equal pay; to provide with respect for public policy; to provide for definitions; to further prohibit pay discrimination; to provide for a complaint procedure, penalties, attorney fees, and damages; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:661 through 669, is hereby amended and reenacted to read as follows:

CHAPTER 6-A. LOUISIANA EQUAL PAY ~~FOR WOMEN~~ ACT

§661. Short title; citation

This Chapter shall be known and may be cited as the "Louisiana Equal Pay ~~for Women~~ Act".

§662. Declaration of public policy

The public policy of this state is that ~~a woman who performs public service for the state is entitled to be paid the same compensation for her service as is paid to a man who performs same kind, grade and quality of service, and a~~ all employees

1 shall be compensated equally for work that is the same or equal in kind and
2 quality. ~~No~~ distinction in compensation may ~~not~~ be made because of sex.

3 §663. Definitions

4 As used in this Chapter, the following terms shall have the definitions
5 ascribed in this Section unless the context indicates otherwise:

6 (1) "Commission" means the Louisiana Commission on Human Rights.

7 (2) "Employee" means any ~~female~~ individual who is employed to work forty
8 or more hours a week and who is employed by ~~the~~ an employer.

9 (3) "Employer" means any department, office, division, agency, commission,
10 board, committee or other organizational unit of the state or any unit of local
11 government or political subdivision, any individual, partnership, corporation,
12 association, business, trust, person, contractor, labor organization, or entity for
13 which fifty or more employees are employed within the state.

14 (4) "Unpaid wages" means the difference between the compensation
15 actually paid to an employee and the amount owed to the employee.

16 §664. Prohibited acts

17 A. No employer may discriminate against an employee on the basis of sex by
18 paying wages to an employee at a rate less than that paid ~~within the same agency~~ by
19 the same employer to another employee of a different sex for the same or
20 substantially similar work on jobs ~~in which the employee's performance requires that~~
21 require equal skill, effort, education, and responsibility and ~~that are performed under~~
22 similar involve the same or equal working conditions including time worked in the
23 position.

24 B. Nothing in Subsection A of this Section shall prohibit the payment of
25 different wage rates to employees when such payment is made pursuant to any of the
26 following:

27 (1) A seniority system.

28 (2) A merit system.

29 (3) A system that measures earnings by quantity or quality of production.

(4) A differential based on a bona fide factor other than sex **and consistent with a business necessity**, including but not limited to education, training, or experience, provided that ~~both~~:

~~(a) The~~ **the** employer demonstrates that such factor is related to the job position in question.

~~(b) No alternative employment practice would serve the same legitimate business purpose without producing such a differential.~~

C. An employer ~~who is paying wages in violation of this Chapter~~ may not, in order to comply with this Chapter, reduce the wages of any other employee.

D. It shall be unlawful for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided ~~under~~ **pursuant to** this Chapter. It shall be unlawful for any employer to discriminate, retaliate, or take any adverse employment action, including but not limited to termination or in any other manner discriminate against any employee for inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, or aiding or encouraging any other employee to exercise his rights ~~under~~ **pursuant to** this Chapter.

E. It shall be unlawful for an employer ~~subject to this Chapter~~ to discriminate, retaliate, or take any adverse employment action, including but not limited to termination against an employee because, in exercising or attempting to exercise the employee's rights ~~under~~ **pursuant to** this Chapter, ~~such~~ **the** employee:

(1) Has filed any complaint or has instituted or caused to be instituted any proceeding to enforce the employee's rights ~~under~~ **pursuant to** this Chapter.

(2) Has provided or will provide any information in connection with any inquiry, **hearing**, or proceeding relating to any right afforded to an employee pursuant to this Chapter, **regardless of whether the information is related to the employee's rights or the rights of another employee.**

(3) Has testified or will testify in any inquiry, **hearing**, or proceeding relating to any right afforded to an employee pursuant to this Chapter, **regardless of whether**

1 the testimony is related to the employee's rights or the rights of another
2 employee.

3 F. An employee's agreement to work at a rate of compensation that is
4 less than the rate to which the employee is entitled may not be used as a defense
5 by the employer in any action against him brought pursuant to this Chapter
6 unless an employee negotiated the lesser compensation for specific
7 accommodations.

8 G. The provisions of this Chapter shall be construed to prohibit
9 discrimination in pay regardless of whether the differential in pay is intentional
10 or unintentional.

11 §665. Complaint procedure

12 A. ~~An~~ Any employee who in good faith believes that ~~her~~ his employer is in
13 violation of this Chapter shall submit written notice of the alleged violation to ~~the~~ his
14 employer. An employer who receives such written notice from an employee shall
15 have sixty days from receipt of the notice to investigate the matter and remedy any
16 ~~violation of this Chapter~~ discriminatory differential in pay. If ~~an~~ the employer
17 remedies the violation in a manner that complies with the statute and does so within
18 the time provided ~~herein~~ in this Subsection, the employee may not bring any action
19 against or seek unpaid wages from the employer ~~pursuant to this Chapter except~~
20 ~~as provided in Subsections B and C of this Section~~ regarding the remedied
21 complaint.

22 B. If ~~an~~ the employer fails to resolve the dispute to the satisfaction of ~~such~~
23 the employee within the ~~time provided herein~~ allotted sixty days, the employee may
24 file a complaint with the commission requesting an investigation of the complaint
25 pursuant to this Chapter, Chapter 3-A of this Title, or R.S. 51:2257.

26 C. If the commission finds evidence of discriminatory, retaliatory or other
27 adverse employment action on the part of the employer in violation of this Chapter
28 but is unable to resolve or mediate the dispute, or fails to render a decision ~~as to~~
29 regarding the dispute within one hundred eighty days from the filing of the

1 **complaint**, or issues a finding of no discrimination on the part of the employer, the
2 employee may institute a civil suit in ~~the Nineteenth Judicial District Court~~ **a district**
3 **court of competent jurisdiction. In no event shall a civil suit be instituted prior**
4 **to the expiration of one hundred eighty days from the filing of the complaint**
5 **with the commission.**

6 §666. Damages

7 A. ~~(1)~~ An employer who ~~violates~~ **is found to have violated** the provisions of
8 this Chapter shall be liable to the affected employees in the amount of the employee's
9 **employee for** unpaid wages and ~~reasonable attorney fees and costs~~ **interest. The**
10 **award for unpaid wages shall not exceed the payment of unpaid wages for**
11 **thirty-six months.**

12 **(2) The prevailing party shall be awarded reasonable attorney fees.**

13 **(3) In addition to the damages provided for in this Subsection, the court**
14 **may award the employee up to the amount of any unpaid wages, reinstatement**
15 **of employment, promotion, or compensation for lost benefits.**

16 B. The award of monetary relief **beyond attorney fees** shall be limited to
17 ~~those violations which have~~ **that** occurred within a thirty-six-month period prior to
18 the employee's written notice to the employer, ~~as required in R.S. 23:665(A).~~

19 C. ~~In cases where suit is filed in the district court, no monetary relief may be~~
20 ~~awarded the employee for losses incurred between the date that the district court~~
21 ~~rendered its final judgment and the date upon which all appeals of that judgment~~
22 ~~have been exhausted.~~

23 ~~D.~~ Interim earnings by the employee ~~discriminated against~~ shall operate to
24 reduce the monetary relief otherwise allowable ~~under~~ **pursuant to** this Chapter.

25 E. **D.** Nothing in this Chapter prevents the **voluntary** settlement of a claim
26 by agreement ~~of~~ **between** the employer and **the** employee for a lesser amount than
27 the employee alleges the employee is due.

28 F. **E.** An employee found by ~~a~~ **the** court to have brought a frivolous claim
29 ~~under~~ **pursuant to** this Chapter shall be held liable to the employer or any agent of

1 the employer who was named a defendant in the suit, or both, for reasonable
2 damages, reasonable attorney fees, and court costs incurred as a result of the claim.

3 §667. Limitation of actions

4 A. Any action filed in ~~the Nineteenth Judicial District Court~~ **district court**
5 to recover unpaid wages or any other form of relief for a violation of this Chapter
6 shall be commenced within one year of the date that an employee is aware or should
7 have been aware that the employee's employer is in violation of this Chapter.

8 B. ~~This~~ **The** one-year prescriptive period shall be suspended during the
9 sixty-day period allowed **to** the employer by this Chapter to respond to the
10 employee's written notice, during the pendency of any administrative review or
11 investigation of the employee's claim by the ~~Louisiana Commission on Human~~
12 ~~Rights~~ **commission** or the United States Equal Employment Opportunity
13 Commission, or both.

14 §668. Records to be kept by employers

15 ~~A. An~~ **Every** employer subject to this Chapter shall create and preserve
16 records reflecting the name, **sex**, address, ~~and~~ position of each employee, and all
17 wages paid to each employee. These records shall be preserved for a period of not
18 less than three years from the employee's last date of employment with the employer.

19 **B.(1) Any records created, preserved, or obtained pursuant to this**
20 **Chapter shall be confidential and privileged, and shall not be subject to**
21 **disclosure under the Public Records Law when in the custody or control of the**
22 **commission.**

23 **(2) Any records created, preserved, or obtained pursuant to this Chapter**
24 **shall be confidential. The employer may seek a protective order and an in**
25 **camera inspection by the court of competent jurisdiction of such records prior**
26 **to any public disclosure.**

27 §669. Supplemental application

28 ~~A. This Chapter is supplemental and is not intended to supercede any~~
29 ~~provision~~ **supplement those remedies related to sex discrimination** provided for

1 in Chapter 3-A of this Title, the "Louisiana Employment Discrimination ~~Act~~ Law",
 2 which prohibits discrimination based upon sex regardless of whether the employer
 3 is a state entity, a private business, or other employer.

4 **B. Nothing in this Chapter is intended to provide any additional**
 5 **remedies or causes of action for any other category of employment**
 6 **discrimination provided for in Chapter 3-A of this Title.**

The original instrument was prepared by James Benton. The following digest, which does not constitute a part of the legislative instrument, was prepared by Nancy Vicknair.

DIGEST

SB 254 Reengrossed

2016 Regular Session

Morrell

Present law provides that women working as employees of the state of Louisiana shall be entitled to the same compensation as men employed by the state of Louisiana.

Proposed law retains present law but extends present law to cover men as well as women.

Proposed law retains present law but extends present law to cover local government employees and private sector employees.

Present law defines "employee" as a woman who works 40 or more hours a week.

Proposed law changes the definition of "employee" to mean any person who performs work for compensation.

Present law defines "employer" as an organizational unit of state government.

Proposed law extends the definition of "employer" from an organizational unit of the state to all employers that employ 50 or more persons.

Present law prohibits an employer from paying 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 within the same state agency.

Proposed law removes the specific reference to "within the same agency" and further provides that the work performed that is eligible for equal pay may be the same or equal to the work done by another employee.

Present law allows exceptions for pay differences in instances in which pay is made under a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a difference based on a factor other than sex so long as the system is job related or furthers a legitimate business purpose.

Proposed law retains present law but allows for an exception in differences in pay if the difference is based on a factor other than sex and is consistent with a business necessity.

Proposed law removes the provision in present law authorizing an exception if no alternative employment practice would serve the same legitimate business purpose without producing such pay difference.

Proposed law disallows discrimination based on sex regardless of whether the discrimination is intentional or unintentional.

Present law prohibits an employer from interfering with, restraining, or denying the exercise of, or attempted exercise of, an employee's right to equal pay and the employee's right to object and bring action to remedy the discrimination.

Proposed law retains present law but clarifies that an employer is prohibited from retaliating against an employee for providing information or testimony for a fellow employee to pursue his rights under the law.

Proposed law provides that an employee's agreement to work at a rate of compensation that is less than the rate to which such employee is entitled may not be used as a defense by the employer in any action against him brought pursuant to proposed law unless such employee negotiated the lesser compensation for specific accommodations.

Present law sets forth a complaint procedure for suspected violations of present law. Present law provides that any employee who believes that his employer is discriminating in compensation may provide written notice to the employer of the violation. Present law provides that, upon receiving the notice, the employer is allowed 60 days to remedy the violation.

Proposed law retains present law and prohibits any employee from seeking unpaid wages from an employer if such employer has remedied the discriminatory differential in pay.

Present law provides that if the employer does not remedy the pay differential within the allotted 60 days, the employee may bring an action against the employer with the Human Rights Commission pursuant to present law.

Proposed law retains present law and in addition to the complaint procedure set forth in present law (R.S. 51:2257) also allows for the use of the complaint procedure set forth in present law (Chapter 3-A of Title 23) regarding discrimination in employment.

Present law provides that if the commission finds evidence of discriminatory action on the part of the employer but fails to resolve the dispute, or fails to render a decision on the dispute, the employee may institute a civil suit in district court.

Proposed law retains present law and limits the time period the commission is allowed to decide on the dispute to 180 days from the filing of the complaint.

Present law requires that suits be brought in the 19th JDC (East Baton Rouge Parish).

Proposed law changes jurisdiction and venue of suits from the 19th JDC to a district court of competent jurisdiction. Prohibits any employee from filing a civil suit prior to the expiration of 180 days from the filing of the complaint with the commission.

Present law requires the court to award damages in the amount of unpaid wages, attorney fees, and costs if a discriminatory difference in pay is found.

Proposed law requires the employer to be liable for unpaid wages and interest. Further requires the award for unpaid wages not to exceed the payment of such unpaid wages for 36 months. Requires the prevailing party to be awarded reasonable attorney fees. Authorizes the court to reinstate employment, grant a promotion, or compensate the employee for lost benefits.

Present law limits monetary relief for a violation of the law to a 36-month period prior to the employee's written notice. Provides that monetary relief cannot be awarded for losses incurred between the time of the district court's final decision and the final determination of

an appellate court.

Proposed law deletes present law and allows monetary relief beyond attorney fees to be awarded for losses incurred between the time of the district court's final decision and the final determination of an appellate court.

Present law allows an employee and his employer to come to an agreement to settle the claim for an amount less than the amount the employee believes he is owed.

Proposed law retains present law and clarifies that the agreement be voluntary.

Present law requires employers to make and preserve records that document names, addresses, positions, and wages of each employee and requires that the records be preserved for at least three years from the last date of employment.

Proposed law retains present law but further requires the sex of each employee be recorded and retained.

Proposed law requires any records created, preserved, or obtained to be confidential and privileged, and not subject to disclosure under the Public Records Law when in the custody or control of the commission. Authorizes the employer to seek a protective order and an in camera inspection by the court of competent jurisdiction of such records prior to any public disclosure.

Present law provides that present law is supplemental and is not intended to supercede any provision of the present law "Louisiana Employment Discrimination Law", which prohibits intentional discrimination based upon sex regardless of whether the employer is a state entity, a private business, or other employer.

Proposed law provides that nothing in present law is intended to provide any additional remedies or causes of action for any other category of employment discrimination.

Effective August 1, 2016.

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

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Change the term describing the work performed by employees for compensation from "same or comparable" to "same or equal" in kind and quality.
2. Increase the number of employees required for an entity to be considered an "employer" within the state from "twenty" to "fifty".
3. Remove the provision in present law authorizing an exception if no alternative employment practice would serve the same legitimate business purpose without producing such pay difference.
4. Provide that an employee's agreement to work at a rate of compensation that is less than the rate to which such employee is entitled may not be used as a defense by the employer in any action against him unless such employee negotiated the lesser compensation for specific accommodations.
5. Prohibit an employee from seeking unpaid wages from an employer if the employer has remedied the discriminatory differential in pay.

6. Remove requirement that the remedy be to the employee's satisfaction.
7. Prohibit any employee from filing a civil suit prior to the expiration of 180 days from the filing of the complaint with the commission.
8. Require the award for unpaid wages not to exceed the payment of such unpaid wages for 36 months.
9. Require the prevailing party to be awarded reasonable attorney fees.
10. Provide for the confidentiality of records created, preserved, or obtained pursuant to proposed law and prohibit disclosure of such documents under the Public Records Law when such records are in the custody or control of the commission.
11. Specify that proposed law is not intended to provide additional remedies for any other category of employment discrimination.