

By Senator Stewart

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1 A bill to be entitled

2 An act relating to employment discrimination; amending  
3 s. 448.07, F.S.; revising provisions prohibiting  
4 discrimination on the basis of sex to include  
5 discrimination on the basis of gender identity;  
6 providing definitions; prohibiting an employer from  
7 providing less favorable employment opportunities to  
8 employees based on their sex or gender identity;  
9 providing exceptions; specifying civil penalties;  
10 revising applicability; amending s. 448.102, F.S.;  
11 prohibiting an employer from taking certain employment  
12 actions against employees; creating s. 448.111, F.S.;  
13 providing a short title; prohibiting an employer from  
14 engaging in certain activities relating to employee  
15 wages and benefits or requiring an employee to sign  
16 certain waivers; providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Section 448.07, Florida Statutes, is amended to  
21 read:

22 448.07 Wage rate discrimination based on sex or gender  
23 identity prohibited.—

24 (1) DEFINITIONS.—As used in this section, unless the  
25 context or subject matter clearly requires otherwise, the  
26 following terms shall have the meanings as defined in this  
27 section:

28 (a) "Business necessity" means an overriding legitimate  
29 business purpose that relies on a bona fide factor, as described  
30 in subparagraph (2)(a)4., to effectively fulfill such business  
31 purpose.

32 (b) ~~(a)~~ "Employee" means any individual employed by an

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33 employer, including individuals employed by the state or any of  
34 its political subdivisions or instrumentalities of subdivisions.

35 (c)~~(b)~~ "Employer" means any person who employs two or more  
36 employees.

37 (d) "Gender identity" means an individual's identification  
38 of self as male, female, a combination of male and female, or  
39 neither male or female, regardless of the individual's  
40 physiology or assigned sex at birth.

41 (e) "Less favorable employment opportunities" means:

42 1. Assigning or directing an employee to a position or  
43 career track in which the work performed requires substantially  
44 less skill, effort, and responsibility than the work performed  
45 by the majority of individuals in the employee's same occupation  
46 and labor market area;

47 2. Assigning the employee work less likely to lead to a  
48 promotion or career advancement opportunity; or

49 3. Limiting or depriving an employee of a promotion or  
50 career advancement opportunity that would otherwise be available  
51 to the employee but for the employee's sex or gender identity.

52 (h)~~(e)~~ "Wages" means and includes all compensation paid by  
53 an employer or the employer's ~~his or her~~ agent for the  
54 performance of service by an employee, including the cash value  
55 of all compensation paid in any medium other than cash.

56 (f)~~(d)~~ "Rate" with reference to wages means the basis of  
57 compensation for services by an employee for an employer and  
58 includes compensation based on time spent in the performance of  
59 such services, on the number of operations accomplished, or on  
60 the quality produced or handled.

61 (g)~~(e)~~ "Unpaid wages" means the difference between the

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62 wages actually paid to an employee and the wages required to be  
63 paid to an employee pursuant to subsection (3).

64 (2) DISCRIMINATION BASED ON BASIS OF SEX OR GENDER IDENTITY  
65 PROHIBITED.—

66 (a) An ~~No~~ employer may not provide less favorable  
67 employment opportunities to employees based on their ~~shall~~  
68 discriminate between employees on the basis of sex or gender  
69 identity or pay by paying wages to employees at a rate less than  
70 the rate the employer at which he or she pays wages to employees  
71 of the opposite sex or a different gender identity for  
72 substantially similar ~~equal~~ work on jobs the performance of  
73 which requires equal skill, effort, and responsibility, and  
74 which are performed under similar working conditions, except  
75 when the employer demonstrates the entire wage differential is  
76 based on one or more of the following reasonably applied factors  
77 when such payment is made pursuant to:

- 78 1. A seniority system;
- 79 2. A merit system;
- 80 3. A system that ~~which~~ measures earnings by quantity or  
81 quality of production; or
- 82 4. A bona fide differential based on any reasonable factor  
83 other than sex or gender identity, including, but not limited  
84 to, education, training, or experience. This subparagraph only  
85 applies if the employer demonstrates that the factor is not  
86 based on, or derived from, a sex-based or gender identity-based  
87 wage differential, is job related with respect to the position  
88 in question, and is consistent with a business necessity.

89 (b) An employer who is paying a wage in violation of this  
90 section may not reduce another employee's wage to comply with

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91 this section ~~when exercised in good faith.~~

92 ~~(c) (b)~~ A No person may not shall cause or attempt to cause  
93 an employer to discriminate against an any employee in violation  
94 of ~~the provisions of~~ this section.

95 (3) CIVIL ACTION FOR UNPAID WAGES.—Any employer or person  
96 who violates ~~the provisions of~~ this section is liable to the  
97 employee for the amount of the difference between the amount the  
98 employee was paid and the amount he or she should have been paid  
99 under this section. Nothing in this section allows a claimant to  
100 recover more than an amount equal to any his or her unpaid wages  
101 ~~while so employed for 1 year prior to the filing of the claim.~~  
102 An action to recover such liability may be maintained in any  
103 court of competent jurisdiction by the aggrieved employee within  
104 6 months after termination of employment. The court in such  
105 action may award to the prevailing party costs of the action and  
106 a reasonable attorney ~~attorney's~~ fee.

107 (4) CIVIL PENALTIES FOR VIOLATIONS.—

108 (a) An employer who violates this section is subject to a  
109 civil penalty of:

110 1. Up to \$2,500 for a first violation.

111 2. Up to \$3,000 for a second violation.

112 3. Up to \$5,000 for a third and each subsequent violation.

113 (b) In determining the amount of a civil penalty to be  
114 assessed under paragraph (a), a court of competent jurisdiction  
115 shall consider the severity of the violation.

116 (c) A minority business enterprise, as defined in s.  
117 288.703, is exempt from this section.

118 ~~(4) Nothing in this section or in s. 725.07, relating to~~  
119 ~~discrimination based on sex in providing equal pay for equal~~

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120 ~~services performed, is applicable to any employer, labor~~  
 121 ~~organization or member thereof, or employee whose employer is~~  
 122 ~~subject to the federal Fair Labor Standards Act of 1938, as~~  
 123 ~~amended.~~

124 Section 2. Subsection (4) is added to section 448.102,  
 125 Florida Statutes, to read:

126 448.102 Prohibitions.—An employer may not take any  
 127 retaliatory personnel action against an employee because the  
 128 employee has:

129 (4) (a) Discussed or disclosed the employee's own wages;

130 (b) Inquired about another employee's wages;

131 (c) Discussed another employee's wages if such wages have  
 132 been voluntarily disclosed by such employee;

133 (d) Requested that the employer provide a reason for the  
 134 amount of the employee's own wages; or

135 (e) Aided or encouraged another employee to exercise rights  
 136 under this chapter.

137 Section 3. Section 448.111, Florida Statutes, is created to  
 138 read:

139 448.111 Helen Gordon Davis Fair Pay Protection Act.—

140 (1) SHORT TITLE.—This section may be cited as the "Helen  
 141 Gordon Davis Fair Pay Protection Act."

142 (2) PROHIBITED EMPLOYER ACTIVITIES RELATED TO WAGES AND  
 143 BENEFITS.—An employer may not:

144 (a)1. Screen a job applicant based on prior wages or  
 145 benefits or require that the applicant's prior wages or benefits  
 146 satisfy minimum or maximum criteria.

147 2. Request or require as a condition of being interviewed,  
 148 or as a condition of continued consideration for an employment

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149 offer, that an applicant disclose prior wages or benefits.

150 (b) Request or inquire about the prior wages or benefits of  
151 an applicant from a current or former employer. However, an  
152 applicant may provide written authorization to a prospective  
153 employer to confirm such prior wages or benefits after an  
154 employment offer with compensation has been made to the  
155 applicant.

156 (c) Prohibit an employee from:

- 157 1. Discussing or disclosing the employee's own wages;  
158 2. Inquiring about another employee's wages;  
159 3. Discussing another employee's wages if such wages have  
160 been voluntarily disclosed by such employee; or  
161 4. Requesting that the employer provide a reason for the  
162 amount of the employee's own wages.

163 (d) Require an employee to sign a waiver or any other  
164 document that prohibits the employee from:

- 165 1. Discussing or disclosing the employee's own wages;  
166 2. Inquiring about another employee's wages; or  
167 3. Discussing another employee's wages if such wages have  
168 been voluntarily disclosed by such employee.

169 Section 4. This act shall take effect July 1, 2017.