

1 A bill to be entitled

2 An act relating to discrimination in labor and
3 employment; creating the "Senator Helen Gordon Davis
4 Fair Pay Protection Act"; amending s. 448.07, F.S.;
5 providing definitions; prohibiting an employer from
6 providing less favorable employment opportunities to
7 employees based on their sex; providing exceptions;
8 revising applicability; providing an affirmative
9 defense; providing civil penalties; providing an
10 exemption; amending s. 448.102, F.S.; prohibiting an
11 employer from taking certain employment actions
12 against employees; creating s. 448.111, F.S.;
13 prohibiting an employer from engaging in certain
14 activities relating to employee wages and benefits or
15 requiring employees to sign certain waivers and
16 documents; providing applicability; authorizing an
17 employer to confirm wage or salary history under
18 certain conditions; providing an effective date.

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20 Be It Enacted by the Legislature of the State of Florida:

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22 Section 1. This act may be cited as the "Senator Helen
23 Gordon Davis Fair Pay Protection Act."

24 Section 2. Section 448.07, Florida Statutes, is amended to
25 read:

26 448.07 Wage rate discrimination based on sex prohibited.-

27 (1) DEFINITIONS.—As used in this section, unless the
 28 context or subject matter clearly requires otherwise, the term
 29 ~~following terms shall have the meanings as defined in this~~
 30 ~~section:~~

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

35 (b) ~~(a)~~ "Employee" means any individual employed by an
 36 employer, including individuals employed by the state or any of
 37 its political subdivisions or instrumentalities of subdivisions.

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

40 (d) "Less favorable employment opportunity" means:

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

46 2. Failing to provide an employee with information about
 47 promotions or advancement in the full range of career tracks
 48 offered by the employer;

49 3. Assigning the employee work which is less likely to
 50 lead to a promotion or career advancement opportunity; or

51 4. Limiting or depriving an employee of a promotion or
 52 career advancement opportunity that would otherwise be available
 53 to the employee but for the employee's sex.

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

59 (f)-(e) "Unpaid wages" means the difference between the
 60 wages actually paid to an employee and the wages required to be
 61 paid to an employee under pursuant to subsection (3).

62 (g)-(e) "Wages" means and includes all compensation paid by
 63 an employer or the employer's ~~his or her~~ agent for the
 64 performance of service by an employee, including the cash value
 65 of all compensation paid in any medium other than cash.

66 (2) DISCRIMINATION BASED ON ~~BASIS OF~~ SEX PROHIBITED.—

67 (a) An ~~No~~ employer may not provide a less favorable
 68 employment opportunity to an employee based on the employee's
 69 ~~shall discriminate between employees on the basis of sex. An~~
 70 employer may not pay an employee by paying wages to employees at
 71 a rate that is less than the rate the employer at which he or
 72 she pays wages to an employee who is ~~employees~~ of the opposite
 73 sex for substantially similar ~~equal~~ work on a job, ~~jobs~~ the
 74 performance of which requires equal skill, effort, and
 75 responsibility, and which is ~~are~~ performed under similar working

76 | conditions, unless the employer demonstrates that the entire
77 | wage differential is based on one or more of the following
78 | reasonably applied factors ~~except when such payment is made~~
79 | ~~pursuant to:~~

80 | 1. A seniority system;

81 | 2. A merit system;

82 | 3. A system that ~~which~~ measures earnings by quantity or
83 | quality of production; or

84 | 4. A bona fide differential based on any reasonable factor
85 | that is related to job performance or business operations, such
86 | as education, training, or experience. This subparagraph only
87 | applies if the employer demonstrates that the factor is not
88 | based on, or derived from, a wage differential based on sex; is
89 | job related with respect to the position in question; and is
90 | consistent with a business necessity. This subparagraph does not
91 | apply if the employee demonstrates that an alternative business
92 | practice exists that would serve the same business purpose
93 | without producing the wage differential.

94 | (b) An employer who is paying a wage in violation of this
95 | section may not reduce another employee's wage to comply with
96 | this section ~~other than sex when exercised in good faith.~~

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

100 | (3) CIVIL ACTION FOR UNPAID WAGES.—Any employer or person

101 who violates ~~the provisions of~~ this section is liable to the
102 employee for the amount of the difference between the amount the
103 employee was paid and the amount he or she should have been paid
104 under this section, plus liquidated damages. ~~Nothing in this~~
105 ~~section allows a claimant to recover more than an amount equal~~
106 ~~to his or her unpaid wages while so employed for 1 year prior to~~
107 ~~the filing of the claim.~~ An action may be brought ~~to recover~~
108 ~~such liability may be maintained~~ in any court of competent
109 jurisdiction by one or more employees on their own behalf or on
110 behalf of other employees similarly situated ~~the aggrieved~~
111 ~~employee~~ within 3 years ~~6 months~~ after the date of the alleged
112 violation ~~termination of employment~~. For purposes of this
113 subsection, a violation occurs when a discriminatory
114 compensation decision or other practice is adopted, when an
115 employee becomes subject to a discriminatory compensation
116 decision or other practice, or when an employee is affected by
117 the application of a discriminatory compensation decision or
118 other practice, including each time wages are paid, resulting in
119 whole or in part from such decision or other practice. The court
120 in such action may award to the prevailing party costs of the
121 action and a reasonable attorney ~~attorney's~~ fee.

122 (4) AFFIRMATIVE DEFENSE.—

123 (a) A showing that, within the previous 3 years and before
124 the commencement of a civil action, an employer, in good faith,
125 completed a self-evaluation of his or her pay practices and can

126 demonstrate reasonable progress has been made towards
127 eliminating wage differentials based on sex for comparable work
128 shall be an affirmative defense to liability.

129 (b) An employer's self-evaluation may be designed by the
130 employer if it is reasonable in detail and scope based on the
131 size of the employer's business. An employer who fulfills the
132 requirements in paragraph (a), but cannot demonstrate that the
133 self-evaluation is reasonable in detail and scope, is not
134 entitled to an affirmative defense. However, the employer may
135 not be liable for liquidated damages under this section.

136 (c) If an employer has not completed a self-evaluation, a
137 trier of fact may not draw a negative or an adverse inference
138 from such inaction.

139 (5) CIVIL PENALTIES.—

140 (a) An employer who violates this section is subject to a
141 civil penalty:

- 142 1. Not to exceed \$2,500 for a first violation.
143 2. Not to exceed \$3,000 for a second violation.
144 3. Not to exceed \$5,000 for a third or subsequent
145 violation.

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

149 (6) EXEMPTION.—A minority business enterprise, as defined
150 in s. 288.703, is exempt from this section.

151 ~~(4) Nothing in this section or in s. 725.07, relating to~~
152 ~~discrimination based on sex in providing equal pay for equal~~
153 ~~services performed, is applicable to any employer, labor~~
154 ~~organization or member thereof, or employee whose employer is~~
155 ~~subject to the federal Fair Labor Standards Act of 1938, as~~
156 ~~amended.~~

157 Section 3. Section 448.102, Florida Statutes, is amended
158 to read:

159 448.102 Prohibitions.—An employer may not take any
160 retaliatory or discriminatory personnel action against an
161 employee because the employee has:

162 (1) Disclosed, or threatened to disclose, to any
163 appropriate governmental agency, under oath, in writing, an
164 activity, policy, or practice of the employer that is in
165 violation of a law, rule, or regulation. However, this
166 subsection does not apply unless the employee has, in writing,
167 brought the activity, policy, or practice to the attention of a
168 supervisor or the employer and has afforded the employer a
169 reasonable opportunity to correct the activity, policy, or
170 practice.

171 (2) Provided information to, or testified before, any
172 appropriate governmental agency, person, or entity conducting an
173 investigation, hearing, or inquiry into an alleged violation of
174 a law, rule, or regulation by the employer.

175 (3) Objected to, or refused to participate in, any

176 activity, policy, or practice of the employer which is in
177 violation of a law, rule, or regulation.

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

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

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

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

184 (e) Testified or will testify, assisted, or participated
185 in an investigation or proceeding under this section.

186 Section 4. Section 448.111, Florida Statutes, is created
187 to read:

188 448.111 Prohibited employer activities related to wages
189 and benefits.—

190 (1) An employer may not:

191 (a) Rely on the wage or salary history of an employee in
192 determining the wages or salary for such individual.

193 (b) Orally or in writing seek, request, or require the
194 wage or salary history from a person as a condition to be
195 interviewed or otherwise be considered for employment, or as a
196 condition of employment or promotion.

197 (c) Orally or in writing seek, request, or require the
198 wage or salary history of an employee from a current or former
199 employer except as provided in subsection (3).

200 (d) Refuse to interview, hire, promote, otherwise employ,

201 or otherwise retaliate against a person or employee:
202 1. Based upon prior wage or salary history.
203 2. Because the person or employee did not provide wage or
204 salary history in accordance with this section.
205 3. Because the person or employee filed a complaint
206 alleging a violation of this section.
207 (e) Prohibit an employee from:
208 1. Discussing or disclosing the employee's own wages;
209 2. Inquiring about another employee's wages;
210 3. Discussing another employee's wages if such wages have
211 been voluntarily disclosed by such employee; or
212 4. Requesting that the employer provide a reason for the
213 amount of the employee's own wages.
214 (f) Require an employee to sign a waiver or any other
215 document that prohibits the employee from:
216 1. Discussing or disclosing the employee's own wages;
217 2. Inquiring about another employee's wages;
218 3. Discussing another employee's wages if such wages have
219 been voluntarily disclosed by such employee; or
220 4. Requesting that the employer provide a reason for the
221 amount of the employee's own wages.
222 (2) This section does not prevent an employee from
223 voluntarily disclosing wage or salary history for certain
224 purposes, including, but not limited to, negotiating wages or
225 salary.

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226 (3) An employer may confirm wage or salary history only
227 if, at the time an offer of employment with compensation is
228 made, the person responds to the offer by providing prior wage
229 information to support a wage higher than that offered by the
230 employer.

231 Section 5. This act shall take effect July 1, 2019.