

By Senator Stewart

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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       defining terms; prohibiting an employer from providing  
6       less favorable employment opportunities to employees  
7       based on their sex; providing exceptions; revising  
8       applicability; providing civil penalties; amending s.  
9       448.102, F.S.; prohibiting an employer from taking  
10      certain employment actions against employees; creating  
11      s. 448.111, F.S.; prohibiting an employer from  
12      engaging in certain activities relating to wages and  
13      benefits; prohibiting an employer from requiring  
14      employees to sign certain waivers and documents;  
15      providing applicability; authorizing an employer to  
16      confirm wage or salary history under certain  
17      conditions; providing an effective date.

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

20  
21       Section 1. This act may be cited as the "Senator Helen  
22 Gordon Davis Fair Pay Protection Act."

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

25       448.07 Wage rate discrimination based on sex prohibited.—

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

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

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

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

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

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

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

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

52           3. Assigning the employee work less likely to lead to a  
53 promotion or career advancement opportunity; or

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

57           (e)~~(d)~~ "Rate" with reference to wages means the basis of  
58 compensation for services by an employee for an employer and

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59 includes compensation based on time spent in the performance of  
60 such services, on the number of operations accomplished, or on  
61 the quality produced or handled.

62 ~~(f)(e)~~ "Unpaid wages" means the difference between the  
63 wages actually paid to an employee and the wages required to be  
64 paid to an employee pursuant to subsection (3).

65 (2) DISCRIMINATION BASED ON ~~BASIS OF~~ SEX PROHIBITED.-

66 (a) An ~~No~~ employer may not provide a less favorable  
67 employment opportunity to an employee based on the employee's  
68 shall discriminate between employees on the basis of sex or pay  
69 the employee by paying wages to employees at a rate less than  
70 the rate the employer pays ~~at which he or she pays wages~~ to an  
71 employee ~~employees~~ of the opposite sex for substantially similar  
72 equal work on a job jobs the performance of which requires equal  
73 skill, effort, and responsibility, and which is ~~are~~ performed  
74 under similar working conditions, except when the employer  
75 demonstrates the entire wage differential is based on one or  
76 more of the following reasonably applied factors ~~when such~~  
77 ~~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, including, but not limited to, education,  
84 training, or experience. This subparagraph applies only if the  
85 employer demonstrates that the factor is not based on, or  
86 derived from, a sex-based wage differential, is job-related with  
87 respect to the position in question, and is consistent with a

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88 business necessity. This subparagraph does not apply if the  
89 employee demonstrates that an alternative business practice  
90 exists that would serve the same business purpose without  
91 producing the wage differential.

92 (b) An employer who is paying a wage in violation of this  
93 section may not reduce another employee's wage to comply with  
94 this section when exercised in good faith.

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

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

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117 decision or other practice. The court in such action may award  
118 to the prevailing party costs of the action and a reasonable  
119 attorney attorney's fee.

120 (4) CIVIL PENALTIES.—

121 (a) An employer who violates this section is subject to a  
122 civil penalty:

123 1. Not to exceed \$2,500 for a first violation.

124 2. Not to exceed \$3,000 for a second violation.

125 3. Not to exceed \$5,000 for a third or subsequent  
126 violation.

127 (b) In determining the amount of a civil penalty to be  
128 assessed under paragraph (a), a court of competent jurisdiction  
129 shall consider the severity of the violation ~~Nothing in this~~  
130 ~~section or in s. 725.07, relating to discrimination based on sex~~  
131 ~~in providing equal pay for equal services performed, is~~  
132 ~~applicable to any employer, labor organization or member~~  
133 ~~thereof, or employee whose employer is subject to the federal~~  
134 ~~Fair Labor Standards Act of 1938, as amended.~~

135 Section 3. Section 448.102, Florida Statutes, is amended to  
136 read:

137 448.102 Prohibitions.—An employer may not take any  
138 retaliatory or discriminatory personnel action against an  
139 employee because the employee has:

140 (1) Disclosed, or threatened to disclose, to any  
141 appropriate governmental agency, under oath, in writing, an  
142 activity, policy, or practice of the employer that is in  
143 violation of a law, rule, or regulation. However, this  
144 subsection does not apply unless the employee has, in writing,  
145 brought the activity, policy, or practice to the attention of a

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146 supervisor or the employer and has afforded the employer a  
 147 reasonable opportunity to correct the activity, policy, or  
 148 practice.

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

153 (3) Objected to, or refused to participate in, any  
 154 activity, policy, or practice of the employer which is in  
 155 violation of a law, rule, or regulation.

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

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

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

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

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

164 Section 4. Section 448.111, Florida Statutes, is created to  
 165 read:

166 448.111 Prohibited employer activities related to wages and  
 167 benefits.—

168 (1) An employer may not:

169 (a) Rely on the wage or salary history of a current,  
 170 former, or prospective employee in determining the wages or  
 171 salary for such individual.

172 (b) Orally or in writing seek, request, or require the wage  
 173 or salary history from a current, former, or prospective  
 174 employee as a condition of being interviewed, as a condition of

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175 continuing to be considered for an offer of employment, or as a  
176 condition of employment or promotion.

177 (c) Orally or in writing seek, request, or require the wage  
178 or salary history of a current, former, or prospective employee  
179 from a current or former employer except as provided in  
180 subsection (3).

181 (d) Retaliate against or refuse to interview, hire,  
182 promote, or otherwise employ a current, former, or prospective  
183 employee:

184 1. Based upon prior wage or salary history.

185 2. Because the current, former, or prospective employee did  
186 not provide wage or salary history in accordance with this  
187 section.

188 3. Because the current, former, or prospective employee  
189 filed a complaint alleging a violation of this section.

190 (e) Prohibit an employee from:

191 1. Discussing or disclosing the employee's own wages;

192 2. Inquiring about another employee's wages;

193 3. Discussing another employee's wages if such wages have  
194 been voluntarily disclosed by such employee; or

195 4. Requesting that the employer provide a reason for the  
196 amount of the employee's own wages.

197 (f) Require an employee to sign a waiver or any other  
198 document that prohibits the employee from:

199 1. Discussing or disclosing the employee's own wages;

200 2. Inquiring about another employee's wages; or

201 3. Discussing another employee's wages if such wages have  
202 been voluntarily disclosed by such employee.

203 (2) This section does not prevent a current, former, or

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204 prospective employee from voluntarily disclosing wage or salary  
205 history, including, but not limited to, for the purposes of  
206 negotiating wages or salary.

207 (3) An employer may confirm wage or salary history only if,  
208 at the time an offer of employment with compensation is made,  
209 the prospective employee responds to the offer by providing  
210 prior wage information to support a wage higher than that  
211 offered by the employer.

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