

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:

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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 reordered
24 and amended to 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 (d) "Less favorable employment opportunity" means:

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

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

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

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

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

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, 2020.