

By Senator Stewart

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1 A bill to be entitled
2 An act relating to discrimination in labor and
3 employment; providing a short title; amending s.
4 448.07, F.S.; defining the terms "business necessity"
5 and "less favorable employment opportunity";
6 prohibiting an employer from providing less favorable
7 employment opportunities to employees based on their
8 sex or from paying employees at rates less than those
9 paid to the opposite sex for substantially similar
10 work; revising applicability; prohibiting employers
11 from reducing another employee's wage to avoid
12 violating wage parity requirements; authorizing the
13 payment of liquidated damages to an employee in a
14 civil action; increasing the timeframe during which an
15 aggrieved employee may bring an action after an
16 alleged violation occurs; providing construction;
17 providing civil penalties; creating s. 448.071, F.S.;
18 prohibiting an employer from engaging in certain
19 activities relating to wages and benefits; prohibiting
20 an employer from requiring employees to sign certain
21 waivers and documents; providing construction;
22 authorizing an employer to confirm wage or salary
23 history under certain circumstances; amending s.
24 448.102, F.S.; prohibiting an employer from taking
25 certain personnel actions against employees for
26 specified actions; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. This act may be cited as the "Senator Helen
31 Gordon Davis Fair Pay Protection Act."

32 Section 2. Section 448.07, Florida Statutes, is amended to
33 read:

34 448.07 Wage rate discrimination based on sex prohibited.—

35 (1) DEFINITIONS.—As used in this section, unless the
36 context or subject matter clearly requires otherwise, the term
37 ~~following terms shall have the meanings as defined in this~~
38 ~~section:~~

39 (a) "Business necessity" means an overriding legitimate
40 business purpose that relies on a bona fide factor, as described
41 in subparagraph (2) (a)4., to effectively fulfill that business
42 purpose.

43 (b) "Employee" means any individual employed by an
44 employer, including individuals employed by the state or any of
45 its political subdivisions or instrumentalities of subdivisions.

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

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

49 1. Assigning or directing an employee to a position or
50 career track in which the work performed requires substantially
51 less skill, effort, and responsibility than the work performed
52 by the majority of individuals in the employee's same occupation
53 and labor market area;

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

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

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

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

71 (f)-(e) "Unpaid wages" means the difference between the
72 wages actually paid to an employee and the wages required to be
73 paid to an employee pursuant to subsection (3).

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

75 (a) An ~~No~~ employer may not provide a less favorable
76 employment opportunity to an employee based on the employee's
77 ~~shall discriminate between employees on the basis of sex or pay~~
78 the employee by paying wages to employees at a rate less than
79 the rate the employer pays an employee ~~at which he or she pays~~
80 ~~wages to employees~~ of the opposite sex for substantially similar
81 ~~equal~~ work on a job, ~~jobs~~ the performance of which requires
82 equal skill, effort, and responsibility, and which is ~~are~~
83 performed under similar working conditions, except when the
84 employer demonstrates that the entire wage differential is based
85 on one or more of the following reasonably applied factors ~~when~~
86 ~~such payment is made pursuant to:~~

87 1. A seniority system;

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88 2. A merit system;

89 3. A system that ~~which~~ measures earnings by quantity or
90 quality of production; or

91 4. A bona fide differential based on any reasonable factor
92 other than sex, including, but not limited to, education,
93 training, or experience. This subparagraph applies only if the
94 employer demonstrates that the factor is not based on, or
95 derived from, a sex-based wage differential; is job-related with
96 respect to the position in question; and is consistent with a
97 business necessity. This subparagraph does not apply if the
98 employee demonstrates that an alternative business practice
99 exists that would serve the same business purpose without
100 producing the wage differential.

101 (b) An employer who pays a wage in violation of this
102 section may not reduce another employee's wage to comply with
103 this section ~~when exercised in good faith.~~

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

107 (3) CIVIL ACTION FOR UNPAID WAGES.—Any employer or person
108 who violates ~~the provisions of~~ this section is liable to the
109 employee for the amount of the difference between the amount the
110 employee was paid and the amount he or she should have been paid
111 under this section, plus liquidated damages. Nothing in this
112 section allows a claimant to recover more than an amount equal
113 to his or her unpaid wages while so employed for 1 year prior to
114 the filing of the claim. An action to recover such liability may
115 be maintained in any court of competent jurisdiction by one or
116 more employees on their own behalf or on behalf of other

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117 employees similarly situated ~~the aggrieved employee~~ within 3
118 years ~~6 months~~ after the date of the alleged violation
119 ~~termination of employment.~~ For purposes of this subsection, a
120 violation occurs when a discriminatory compensation decision or
121 other practice is adopted, when an employee becomes subject to a
122 discriminatory compensation decision or other practice, or when
123 an employee is affected by the application of a discriminatory
124 compensation decision or other practice, including each time
125 wages are paid, resulting in whole or in part from such a
126 decision or practice. The court in such action may award to the
127 prevailing party costs of the action and a reasonable attorney
128 attorney's fee.

129 (4) CIVIL PENALTIES.—

130 (a) An employer who violates this section is subject to a
131 civil penalty:

- 132 1. Not to exceed \$2,500 for a first violation.
133 2. Not to exceed \$3,000 for a second violation.
134 3. Not to exceed \$5,000 for a third or subsequent
135 violation.

136 (b) In determining the amount of a civil penalty to be
137 assessed under paragraph (a), a court of competent jurisdiction
138 shall consider the severity of the violation ~~Nothing in this~~
139 ~~section or in s. 725.07, relating to discrimination based on sex~~
140 ~~in providing equal pay for equal services performed, is~~
141 ~~applicable to any employer, labor organization or member~~
142 ~~thereof, or employee whose employer is subject to the federal~~
143 ~~Fair Labor Standards Act of 1938, as amended.~~

144 Section 3. Section 448.071, Florida Statutes, is created to
145 read:

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146 448.071 Prohibited employer activities related to wages and
147 benefits.—

148 (1) An employer may not:

149 (a) Rely on the wage or salary history of a current,
150 former, or prospective employee in determining the wages or
151 salary for such individual.

152 (b) Orally or in writing seek, request, or require the wage
153 or salary history from a current, former, or prospective
154 employee as a condition of being interviewed, as a condition of
155 continuing to be considered for an offer of employment, or as a
156 condition of employment or promotion.

157 (c) Orally or in writing seek, request, or require the wage
158 or salary history of a current, former, or prospective employee
159 from a current or former employer, except as provided in
160 subsection (3).

161 (d) Retaliate against or refuse to interview, hire,
162 promote, or otherwise employ a current, former, or prospective
163 employee:

164 1. Based upon prior wage or salary history.

165 2. Because the current, former, or prospective employee did
166 not provide wage or salary history, in accordance with this
167 section.

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

170 (e) Prohibit an employee from:

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

172 2. Inquiring about another employee's wages;

173 3. Discussing another employee's wages, if such wages have
174 been voluntarily disclosed by the other employee; or

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

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

- 179 1. Discussing or disclosing the employee's own wages;
180 2. Inquiring about another employee's wages; or
181 3. Discussing another employee's wages, if such wages have
182 been voluntarily disclosed by the other employee.

183 (2) This section does not prevent a current, former, or
184 prospective employee from voluntarily disclosing wage or salary
185 history, including, but not limited to, for the purposes of
186 negotiating wages or salary.

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

192 Section 4. Section 448.102, Florida Statutes, is amended to
193 read:

194 448.102 Prohibitions.—An employer may not take any
195 retaliatory or discriminatory personnel action against an
196 employee because the employee has:

197 (1) Disclosed, or threatened to disclose, to any
198 appropriate governmental agency, under oath, in writing, an
199 activity, policy, or practice of the employer that is in
200 violation of a law, rule, or regulation. However, this
201 subsection does not apply unless the employee has, in writing,
202 brought the activity, policy, or practice to the attention of a
203 supervisor or the employer and has afforded the employer a

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204 reasonable opportunity to correct the activity, policy, or
205 practice.

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

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

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

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

215 (c) Discussed another employee's wages, if such wages have
216 been voluntarily disclosed by the other employee;

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

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

221 Section 5. This act shall take effect July 1, 2023.