

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
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As Engrossed: H3/10/17  
**A Bill**

HOUSE BILL 1021

By: Representative Love

### **For An Act To Be Entitled**

AN ACT TO AMEND WAGE DISCRIMINATION LAWS; TO PROVIDE PAY EQUITY FOR WOMEN; TO PROVIDE REMEDIES FOR VIOLATIONS OF WAGE DISCRIMINATION LAWS; TO PROHIBIT DISCHARGE OR DISCRIMINATION OR RETALIATION ACTIONS AGAINST AN EMPLOYEE FOR ENGAGING IN CONDUCT PERMITTED UNDER THE WAGE DISCRIMINATION LAWS; TO PROVIDE REMEDIES FOR AN EMPLOYEE WHO IS DISCHARGED OR DISCRIMINATED OR RETALIATED AGAINST FOR ENGAGING IN CONDUCT PERMITTED UNDER THE WAGE DISCRIMINATION LAWS; AND FOR OTHER PURPOSES.

### **Subtitle**

TO PROVIDE PAY EQUITY FOR WOMEN; AND TO AMEND THE WAGE DISCRIMINATION LAWS CONCERNING PROHIBITED CONDUCT AND REMEDIES FOR VIOLATIONS OF THE WAGE DISCRIMINATION LAWS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 11-4-607 – 11-4-612 are amended to read as follows:

11-4-607. Definitions for §§ 11-4-608 – ~~11-4-612~~ 11-4-614.

As used in §§ 11-4-608 – ~~11-4-612~~ 11-4-614, unless the context otherwise requires:

(1)(A) ~~“Employees” shall mean any person employed for hire in any lawful business, industry, trade, profession, or enterprise.~~



~~(B) However, it shall not include persons engaged in domestic service in the home of the employer; in agricultural service, or in temporary or seasonal employment; employees of any social club, fraternal, charitable, educational, religious, scientific, or literary association, no part of the net earnings of which inures to the benefit of any private individual~~ "Employee" does not include:

(A) Any individual employed by his or her parents, spouse, or child;

(B) An individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility; or

(C) An individual employed outside the State of Arkansas;  
and

~~(2) "Employer" shall include any person, natural or artificial, acting in the interest of an employer directly or indirectly; and~~

~~(3) "Employment" means any employment under contract of hire, expressed or implied, written or oral~~ means a person who employs nine (9) or more employees in the State of Arkansas in each of twenty (20) or more calendar weeks in the current or preceding calendar year, or any agent of such person.

11-4-608. Penalties for violation of §§ 11-4-607 – ~~11-4-612~~ 11-4-614.

Any ~~an~~ employer who violates ~~any a~~ provision of §§ 11-4-607 – ~~11-4-612~~, 11-4-614 or who discharges or in any other manner discriminates against ~~any~~ an employee because the employee has made a complaint to ~~his or her employer, the Director of the Department of Labor, or any other person,~~ has instituted or caused to be instituted ~~any proceedings~~ a proceeding under or related to §§ 11-4-607 – ~~11-4-612~~ 11-4-614, or has testified or is about to testify in ~~any such a~~ proceeding under or related to §§ 11-4-607 – 11-4-614 upon conviction is guilty of an unclassified misdemeanor and shall be fined not more than five hundred dollars (\$500) nor imprisoned more than one (1) year, or both.

11-4-609. Administration of §§ 11-4-607 – ~~11-4-612~~ 11-4-614.

The Director of the Department of Labor shall ~~have the power and it shall be his or her duty to~~ carry out and administer the provisions of §§ 11-

4-607 - ~~11-4-612~~ 11-4-614.

11-4-610. ~~Wage~~ Sex-based wage discrimination ~~between sexes~~ prohibited.

(a) ~~No~~ An employer shall not:

~~(1) discriminate~~ Discriminate in the payment of wages ~~as between the sexes~~ on the basis of sex; or ~~shall pay any~~

~~(2) Pay a female in his or her employ a salary or wage rates less than the~~ salary or wage rates paid to a male ~~employees~~ employee for ~~comparable~~ substantially similar work, when viewed as a composite of skill, effort, and responsibility and performed under similar working conditions.

(b) ~~Nothing in §§ Sections 11-4-607 - 11-4-612 shall~~ 11-4-614 do not prohibit a variation in rates of pay ~~based upon a difference in seniority, experience, training, skill, ability, differences in duties and services performed, differences in the shift or time of the day worked, or any other reasonable differentiation except difference in sex~~ when the employer demonstrates the following:

(1) The compensation differential is based on one (1) or more of the following factors:

(A) A seniority system;

(B) A merit system;

(C) A system that measures earning by quantity or quality of production; or

(D)(i) A bona fide factor other than sex, including without limitation education, training, experience, skill, ability, differences in duties and services performed, and differences in the shift or time of the day worked.

(ii) The factors stated in subdivision (b)(1)(D)(i) of this section:

(a) Apply only if the employer demonstrates that the factor is not based on or derived from a sex-based differential in compensation, is job related with respect to the position in question, and is consistent with an overriding legitimate business purpose such that the factor relied on effectively fulfills the business purpose the factor is intended to serve; and

(b) Do not apply if the employee demonstrates that an alternative business practice exists that would serve the same

business purpose without producing the differential in compensation;

(2) Each factor being relied on is applied reasonably; and

(3)(A) The factors relied on account for the entire differential in compensation.

(B) However, prior salary in any position, by itself, does not justify a differential in compensation.

11-4-611. ~~Action~~ Actions to collect unpaid salary or wages.

(a)(1) An employer who violates the provisions of § 11-4-610 ~~shall be~~ is liable to the employee or employees affected in the amount of ~~their unpaid~~ the salary or wages that each employee is deprived of by reason of the violation.

(2) However, if an employee recovers any moneys under federal law for the same violation, the employee shall return to the employer the lesser of the amount recovered under this section or the amount recovered under federal law.

(b)(1) ~~Action to recover the wages~~ An action under this section may be maintained in any court of competent jurisdiction by any one (1) or more employees.

(2) ~~Any~~ An agreement between the employer and the employee for that employee to work for less than the salary or wage to which the employee is entitled under §§ 11-4-607 - ~~11-4-612~~ shall be 11-4-614 ~~is~~ no defense to the action.

(3) In addition to any salary or wages recovered, the court in the action shall allow an additional equal amount as liquidated damages plus a reasonable attorney's fee and court costs.

(4)(A) At the request of ~~any~~ an employee paid less than the salary or wage to which he or she is entitled under §§ 11-4-607 - ~~11-4-612~~ 11-4-614, the Director of the Department of Labor ~~may~~ may:

(i) May take an assignment of the salary or wage claim in trust for the employee; and ~~shall~~

(ii) Shall bring any legal action necessary to collect the claim.

(B) The director shall not be required to pay any court costs in connection with the action.

(c)(1) An employee may file a complaint with the Department of Labor

alleging that an employer has violated § 11-4-610.

(2) The department shall:

(A) Investigate each complaint filed under this subdivision (c)(1) of this section;

(B)(i) Keep confidential the name of an employee who submits a complaint under subdivision (c)(1) of this section until the department establishes the validity of the complaint.

(ii) However, the department may disclose the name of an employee who submits a complaint under subdivision (c)(1) of this section if disclosure is required to investigate the complaint; and

(C) Take all proceedings necessary to enforce the payment of any moneys found to be due and unpaid to an employee who files a complaint under subdivision (c)(1) of this section.

(3)(A) If the department finds that an employer has violated § 11-4-610, the department may supervise the payment of salary or wages and interest found to be due and unpaid to employees under § 11-4-610 and this section.

(B) Acceptance of payment in full made by an employer and approved by the department is a waiver of the employee's cause of action under this section.

(d)(1)(A) Unless the affected employee or group of employees request otherwise, the department may commence and prosecute a civil action on behalf of the employee and a similarly affected group of employees to recover unpaid salary or wages, interest, and liquidated damages for a violation under § 11-4-610.

(B) If the department pursues a civil action under subdivision (d)(1)(A) of this section, the department may recover the costs of the civil action if the civil action is successful.

(2)(A) The consent of an employee to the bringing of a civil action is a waiver by the employee of the employee's cause of action under this section unless the civil action is dismissed without prejudice by the department.

(B) However, an employee may intervene in a civil action or may initiate an independent civil action if the civil action under this subsection has not been determined within one hundred eighty (180) days from the date of the filing of the complaint.

~~(e) Any~~ (e) An action to recover salary or wages, interest, and liquidated damages based on violation of § 11-4-610 ~~must~~ shall be commenced within ~~two~~:

(1) Two (2) years of the accrual thereof and not afterwards after the cause of action accrues; or

(2) If the cause of action arises out of willful violation of § 11-4-610, three (3) years after the cause of action accrues.

11-4-612. Employer to keep records.

(a) ~~Every~~ An employer subject to §§ 11-4-607 – ~~11-4-612~~ 11-4-614 shall keep and maintain records of the salaries and wage rates, job classifications, and other terms and conditions of employment of ~~the persons employed by him or her~~ each employee of the employer, and the records shall be preserved for a period of *three (3)* years.

(b) The records kept under this section shall ~~also~~ be made available to the parties and to the court ~~wherein~~ in which an action ~~to recover unpaid wages~~ under this subchapter is pending.

SECTION 2. Arkansas Code Title 11, Chapter 4, Subchapter 6, is amended to add *additional sections* to read as follows:

11-4-613. Action for discrimination or retaliation.

(a) An employer shall not:

(1) Discharge an employee or discriminate or retaliate against an employee for an action taken by an employee under § 11-4-611; or

(2) Prohibit an employee from:

(A) Disclosing the employee's own salary or wages;

(B) Discussing the salary or wages of others;

(C) Inquiring about another employee's salary or wages; or

(D) Aiding or encouraging another employee to exercise his or her rights under § 11-4-611.

(b) This section does not create an obligation to disclose salaries or wages.

(c) An employee who has been discharged, discriminated against, or retaliated against in the terms or conditions of his or her employment because the employee engaged in conduct permitted under § 11-4-611 may recover in a civil action:

(1) Reinstatement;

(2) Reimbursement for lost salary or wages and work benefits caused by the acts of the employer, including interest on the lost salary or wages and work benefits; and

(3) Any appropriate equitable relief.

(d) A civil action brought under this section shall be commenced within one (1) year after the cause of action accrues.

11-4-614. Rules.

The Department of Labor may promulgate rules to implement and administer this subchapter.

/s/Love