

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

HOUSE BILL 1806

5 By: Representatives McCullough, Blake, Clowney, V. Flowers, D. Garner, Godfrey, Scott  
6 By: Senators G. Leding, Bond  
7

## For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE ARKANSAS EQUAL PAY ACT OF  
10 2019; TO REQUIRE STATE AGENCIES TO PAY EQUAL WAGES OR  
11 SALARIES TO BOTH MEN AND WOMEN; TO ENCOURAGE ALL  
12 EMPLOYERS TO ELIMINATE WAGE AND SALARY DIFFERENTIALS;  
13 TO REWARD BUSINESSES WHO LEAD ARKANSAS IN THE  
14 POSITIVE DIRECTION OF EQUALITY IN PAY; TO EDUCATE THE  
15 PUBLIC ON WAGE AND SALARY DIFFERENTIALS; TO PROVIDE  
16 GIRLS AND WOMEN WITH SPECIALIZED TRAINING ON WAGE AND  
17 SALARY NEGOTIATION IN THE WORKPLACE; AND FOR OTHER  
18 PURPOSES.  
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20

## Subtitle

21 TO ESTABLISH THE ARKANSAS EQUAL PAY ACT  
22 OF 2019.  
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25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 SECTION 1. DO NOT CODIFY. Title.

29 This act shall be known as the "Arkansas Equal Pay Act of 2019".  
30

31 SECTION 2. DO NOT CODIFY. Legislative intent.

32 The General Assembly finds that:

33 (1) Women have entered the workforce in record numbers over the  
34 past fifty (50) years;

35 (2)(A) Despite the enactment of the Equal Pay Act of 1963,  
36 Pub.L. No. 88-38, many women continue to earn significantly lower pay than



1 men for equal work.

2 (B) These pay disparities exist in both the private and  
 3 governmental sectors.

4 (C) In many instances, the pay disparities can only be due  
 5 to continued intentional discrimination or the lingering effects of past  
 6 discrimination;

7 (3) The existence of such pay disparities:

8 (A) Depresses the wages of working families who rely on  
 9 the wages of all members of the family to make ends meet;

10 (B) Undermines women’s retirement security, which is often  
 11 based on earnings while in the workforce;

12 (C) Prevents the optimum utilization of available labor  
 13 resources;

14 (D) Has been spread and perpetuated through commerce, and  
 15 the channels and instrumentalities of commerce, among the workers of  
 16 Arkansas;

17 (E) Burdens commerce and the free flow of goods in  
 18 commerce;

19 (F) Constitutes an unfair method of competition in  
 20 commerce;

21 (G) Leads to labor disputes burdening and obstructing  
 22 commerce and the free flow of goods in commerce;

23 (H) Interferes with the orderly and fair marketing of  
 24 goods in commerce; and

25 (I) In many instances, may deprive workers of equal  
 26 protection on the basis of sex in violation of:

27 (i) The Fifth and Fourteenth Amendments to the  
 28 United States Constitution; and

29 (ii) Arkansas Constitution, Article 2, §§ 2, 3, and  
 30 18;

31 (4)(A) Artificial barriers to the elimination of discrimination  
 32 in the payment of wages and salaries on the basis of sex continue to exist  
 33 decades after the enactment of the Fair Labor Standards Act of 1938, 29  
 34 U.S.C. 201 et seq., the Civil Rights Act of 1964, Pub. L. No. 88-352, and  
 35 Arkansas Code § 11-4-601 et seq.

36 (B)(i) These barriers have resulted, in significant part,

1 because the Equal Pay Act of 1963 has not worked as Congress originally  
 2 intended.

3 (ii) Additional laws are necessary to ensure that  
 4 the Equal Pay Act of 1963 provides effective protection to those subject to  
 5 pay discrimination on the basis of their sex.

6 (C) Elimination of those barriers will have positive  
 7 effects, including without limitation:

8 (i) Providing a solution to problems in the economy  
 9 created by unfair pay disparities;

10 (ii) Substantially reducing the number of working  
 11 women earning unfairly low wages or salaries, thereby reducing the dependence  
 12 on public assistance;

13 (iii) Promoting stable families by enabling all  
 14 family members to earn a fair rate of pay;

15 (iv) Remedying the effects of past discrimination on  
 16 the basis of sex and ensuring that in the future workers are afforded equal  
 17 protection on the basis of sex; and

18 (v) Ensuring equal protection under the law;

19 (5) The Department of Labor, the Office of Personnel Management,  
 20 and other state agency employers have important and unique responsibilities  
 21 to help ensure that women receive equal pay for equal work;

22 (6) With a stronger commitment by state agency employers to  
 23 their responsibilities, increased information as a result of the protections  
 24 created by this act, wage and salary data, and more effective remedies, women  
 25 will be better able to recognize and enforce their rights;

26 (7) Certain employers have already made great strides in  
 27 eradicating unfair pay disparities in the workplace and their achievements  
 28 should be recognized; and

29 (8) By enactment of this act, the State of Arkansas commits to  
 30 lead our fellow states by ensuring that pay disparity based on sex is  
 31 eradicated in the State of Arkansas and, in turn, the United States of  
 32 America.

33  
 34 SECTION 3. Arkansas Code Title 11, Chapter 4, Subchapter 6, is amended  
 35 to add additional sections to read as follows:

36 11-4-613. Negotiation skills training for girls and women.

1       (a) The Department of Labor, with the assistance of the Department of  
2 Career Education, may establish and carry out a competitive grant program  
3 designed to provide negotiation skills programs and training for girls and  
4 women.

5       (b) The Department of Labor may provide the grants under this section  
6 to state agencies, municipalities, counties, school districts, private  
7 nonprofit organizations, and other community-based organizations upon  
8 application.

9       (c) An entity that receives a grant under this section shall use the  
10 funds to carry out an effective negotiation skills training program that:

11           (1) Empowers girls and women; and

12           (2) Helps girls and women strengthen their negotiation skills to  
13 allow the girls and women to obtain higher wages, salaries, and rates of  
14 compensation that are equal to those paid to similarly situated male  
15 employees.

16       (d) The Department of Labor shall enact rules in furtherance of this  
17 subchapter which, at a minimum:

18           (1) Provide for the application form and process;

19           (2) Adopt the factors to be considered in awarding the grants;

20 and

21           (3) Set minimum standards for the programs and trainings to be  
22 instituted under this section.

23       (e) No later than September 1, 2020, and annually thereafter, the  
24 Department of Labor shall prepare and submit to the Legislative Council a  
25 report:

26           (1) Describing the activities conducted under this section;

27           (2) Evaluating the effectiveness of the activities in achieving  
28 the purposes of this subchapter; and

29           (3) If the Arkansas Award for Pay Equity in the Workplace has  
30 not been awarded, an explanation of the reasons for the failure to make the  
31 award.

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33       11-4-614. Research, education, and outreach.

34       (a) The Department of Labor may conduct and is encouraged to conduct  
35 studies and provide information to employers, labor organizations,  
36 professional associations, educational institutions, and the general public

1 concerning the means available to eliminate pay disparities between men and  
2 women including without limitation:

3 (1) Conducting and promoting research to develop the means to  
4 expeditiously correct the conditions leading to pay disparities;

5 (2) Publishing the findings resulting from studies and other  
6 materials relating to eliminating the pay disparities;

7 (3) Sponsoring and assisting state and community informational  
8 and educational programs;

9 (4) Providing information on the means of eliminating pay  
10 disparities;

11 (5) Recognizing and promoting the achievements of employers,  
12 labor organizations, and professional associations that have worked to  
13 eliminate pay disparities; and

14 (6) Convening a statewide summit to discuss and consider  
15 approaches for rectifying the pay disparities.

16  
17 11-4-615. Arkansas Award for Pay Equity in the Workplace –  
18 Establishment.

19 (a) There is established the "Arkansas Award for Pay Equity in the  
20 Workplace" which shall be:

21 (1) Administered by the Department of Labor; and

22 (2) Awarded, as appropriate, to encourage proactive efforts to  
23 comply with this subchapter.

24 (b) The department shall by rule:

25 (1) Set criteria for receipt of the award, including without  
26 limitation that an employer has made substantial effort to eliminate pay  
27 disparities between men and women and who deserves special recognition for  
28 that effort; and

29 (2) Establish procedures for the application for, third-party  
30 nomination for, and presentation of the award.

31 (c) As used in this section, "employer" includes without limitation:

32 (1) A corporation, whether nonprofit or for profit;

33 (2) A partnership;

34 (3) A professional association;

35 (4) A labor organization;

36 (5) Any other business entity that has regular employees; and

1           (6) An entity carrying out an education referral program,  
 2 training program, apprenticeship, or management training program.

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 4           SECTION 4. Arkansas Code Title 21, Chapter 5, Subchapter 2, is amended  
 5 to add an additional section to read as follows:

6           21-5-226. Equal pay required.

7           (a) As used in this section, "state agency" has the same meaning as  
 8 defined in § 21-5-1501.

9           (b) A state agency shall not discriminate between employees of the  
 10 state agency on the basis of sex in violation of § 21-5-1501, et seq. by  
 11 paying wages or salaries to employees at a rate or in an amount less than the  
 12 rate at which any state agency pays wages or salaries to employees of the  
 13 opposite sex for equal work on jobs.

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 15           SECTION 5. Arkansas Code Title 21, Chapter 5, is amended to add an  
 16 additional subchapter to read as follows:

17                           Subchapter 15 – Equal Pay in Government

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 19           21-5-1501. Definitions.

20           As used in this subchapter:

21                           (1)(A) "Bona fide factor" means a reason or justification for a  
 22 wage differential that is based on qualifications for or performance of a  
 23 job;

24   (B) "Bona fide factor" includes without limitation:

25   (i) Education;

26   (ii) Experience;

27   (iii) Merit; and

28   (iv) Seniority;

29                           (2) "State agency" means an agency, authority, department,  
 30 board, commission, bureau, council, or other agency of the state that is  
 31 supported by an appropriation of state or federal funds; and

32                           (3) "Wage differential" means the difference in wage or salary  
 33 between employees of different sexes who have similar skills.

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 35           21-5-1502. Wage differential based on sex prohibited.

36           (a) A state agency shall not discriminate between employees of the

1 state agency on the basis of sex by paying wages or salaries to employees at  
 2 a rate or in an amount less than the rate at which the state agency pays  
 3 wages to employees of the opposite sex for equal work on jobs, the  
 4 performance of which requires equal skill, effort, and responsibility, and  
 5 that are performed under similar working conditions, except when the payment  
 6 is made pursuant to a bona fide factor that:

7 (A) Is not based upon a person's sex or derived from a  
 8 sex-based consideration;

9 (B) Is job related;

10 (C) Is consistent with business necessity; and

11 (D) Accounts for the entire wage differential in  
 12 compensation at issue;

13 (b) A state agency that is paying a wage differential in violation of  
 14 this subchapter shall not, in order to comply with this subchapter, reduce  
 15 the wage or salary of any employee.

16 (c) A state agency shall not take adverse action against an employee  
 17 because the employee:

18 (1) Filed, communicated, or discussed with any party a  
 19 complaint, either written or verbal, of a violation of this subchapter;

20 (2) Discussed or disclosed his or her wage or salary to any  
 21 other person;

22 (3) Filed an action in court or a claim with the Arkansas State  
 23 Claims Commission alleging a violation of this subchapter; or

24 (4) Testified or assisted in an investigation or hearing  
 25 concerning an alleged violation under this subchapter.

26  
 27 21-5-1503. Penalties.

28 (a)(1) An employee of a state agency may bring an action against a  
 29 state agency for a violation of this subchapter in:

30 (A) The Pulaski County Circuit Court; or

31 (B) A circuit court in the jurisdiction within which the  
 32 alleged violation of this subchapter took place.

33 (2) If the circuit court finds the action to be unconstitutional  
 34 under Arkansas Constitution, Article 5, § 20:

35 (A) The employee may file a claim with the Arkansas State  
 36 Claims Commission; and

1                   (B) The Arkansas State Claims Commission shall have  
 2 jurisdiction over the claim.

3           (b) If the state agency proves by a preponderance of the evidence that  
 4 its decision concerning an alleged violation of this subchapter was made  
 5 pursuant to a seniority system, merit system, or bona fide factor, the burden  
 6 is on the employee to demonstrate by a preponderance of the evidence that:

7                   (1) An alternative employment practice exists that would serve  
 8 the same business purpose without producing the wage differential; and

9                   (2) The employer has not adopted the alternative practice.

10           (c) If the employee prevails in an action under this section, the  
 11 employee shall be awarded:

12                   (1) Compensatory damages;

13                   (2) Reasonable attorney's fees; and

14                   (3) Any other just and proper relief.

15           (d) This section does not limit the rights of an employee provided  
 16 under any provision of state or federal law.

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 18           21-5-1504. Training.

19           Subject to the availability of funds and with the assistance of the  
 20 Arkansas Department of Labor, the Office of Personnel Management shall  
 21 develop and provide a training manual and classes to state agency employers  
 22 and employees concerning matters involving discrimination in the payment of  
 23 wages or salaries.

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 25           SECTION 6. DO NOT CODIFY. Effective date.

26           (a) This act is:

27                   (1) Effective on and after July 1, 2020; and

28                   (2) Not retroactive.

29           (b) A state agency shall not be liable under Sections 4 and 5 of this  
 30 act for actions that occurred before July 1, 2020.