

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

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1806

By: Representatives McCullough, Blake, Clowney, V. Flowers, D. Garner, Godfrey, Scott

By: Senators G. Leding, Bond

For An Act To Be Entitled

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

Subtitle

TO ESTABLISH THE ARKANSAS EQUAL PAY ACT OF 2019.

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

SECTION 1. DO NOT CODIFY. Title.

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

SECTION 2. DO NOT CODIFY. Legislative intent.

The General Assembly finds that:

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

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



men for equal work.

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

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

(3) The existence of such pay disparities:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Ensuring equal protection under the law;

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

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

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

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

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

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

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

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

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

(1) Empowers girls and women; and

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

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

(1) Provide for the application form and process;

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

and

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

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

(1) Describing the activities conducted under this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Administered by the Department of Labor; and

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

(b) The department shall by rule:

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

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

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

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

(2) A partnership;

(3) A professional association;

(4) A labor organization;

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

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

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

21-5-226. Equal pay required.

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

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

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

Subchapter 15 – Equal Pay in Government

21-5-1501. Definitions.

As used in this subchapter:

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

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

(i) Education;

(ii) Experience;

(iii) Merit; and

(iv) Seniority;

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

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

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

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

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

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

(B) Is job related;

(C) Is consistent with business necessity; and

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

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

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

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

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

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

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

21-5-1503. Penalties.

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

(A) The Pulaski County Circuit Court; or

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

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

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

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

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

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

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

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

(1) Compensatory damages;

(2) Reasonable attorney's fees; and

(3) Any other just and proper relief.

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

21-5-1504. Training.

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

SECTION 6. DO NOT CODIFY. Effective date.

(a) This act is:

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

(2) Not retroactive.

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