



House of Representatives

File No. 626

General Assembly

January Session, 2017

(Reprint of File No. 66)

House Bill No. 5591
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 17, 2017

AN ACT CONCERNING PAY EQUITY IN THE WORKFORCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-75 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2017*):

3 (a) No employer shall discriminate in the amount of compensation
4 paid to any employee on the basis of sex. Any difference in pay based
5 on sex shall be deemed a discrimination within the meaning of this
6 section.

7 (b) If an employee can demonstrate that his or her employer
8 discriminates on the basis of sex by paying wages to employees at the
9 employer's business at a rate less than the rate at which the employer
10 pays wages to employees of the opposite sex at such business for equal
11 work on a job, the performance of which requires equal skill, effort and
12 responsibility, and which are performed under [similar] comparable
13 working conditions, such employer must demonstrate that such
14 differential in pay is made pursuant to (1) a seniority system, provided
15 time spent on leave due to a pregnancy-related condition or protected

16 family and medical leave shall not reduce seniority; (2) a merit system;
 17 (3) a system which measures earnings by quantity or quality of
 18 production; or (4) a differential system based upon a bona fide factor
 19 other than sex, such as education, training or experience. Said bona
 20 fide factor defense shall apply only if the employer demonstrates that
 21 such factor (A) is not based upon or derived from a sex-based
 22 differential in compensation, and (B) is job-related and consistent with
 23 business necessity. An employee's prior wage and salary history shall
 24 not be considered a bona fide factor defense to such claim. Such
 25 defense shall not exist where the employee demonstrates that an
 26 alternative employment practice exists that would serve the same
 27 business purpose without producing such differential and that the
 28 employer has refused to adopt such alternative practice.

29 (c) No employer shall discharge, expel or otherwise discriminate
 30 against any person because such person has opposed any
 31 discriminatory compensation practice or because such person has filed
 32 a complaint or testified or assisted in any proceeding pursuant to
 33 section 31-76.

34 Sec. 2. Section 46a-62 of the general statutes is repealed. (*Effective*
 35 *October 1, 2017*)

| | | |
|---|------------------------|------------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2017</i> | 31-75 |
| Sec. 2 | <i>October 1, 2017</i> | Repealer section |

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill alters the defenses available to employers in wage discrimination lawsuits and repeals a provision specifying that human rights law does not supersede labor law on gender wage discrimination matters. This does not result in any fiscal impact to the state or municipalities.

House "A" strikes the original bill and makes various changes to wage discrimination statutes and has no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 5591 (as amended by House "A")******AN ACT CONCERNING PAY EQUITY IN THE WORKFORCE.*****SUMMARY**

This bill limits the defenses available to employers in a gender wage discrimination lawsuit brought under the state's labor law (see BACKGROUND). It prohibits employers from using:

1. an employee's prior wage and salary history as a bona fide factor defense and
2. a seniority system to defend its pay differentials, if the employer reduces an employee's seniority for time spent on leave due to a pregnancy-related condition or protected family and medical leave.

The current labor law generally prohibits gender wage discrimination by requiring employers to pay employees an equal wage for a job that (1) requires equal skill, effort, and responsibility and (2) is performed under similar working conditions. The bill specifies that the second provision applies to workers performing jobs under "comparable," rather than "similar," working conditions. (It is unclear whether this change has any legal effect.)

The state's human rights law also prohibits various discriminatory employment practices, such as gender wage discrimination (CGS § 46a-60). The bill repeals a provision that specifies that the human rights law does not void or supersede the labor law's prohibition on gender wage discrimination. (It is unclear whether the repeal has any legal effect.)

*House Amendment "A" replaces the underlying bill, which specified that the labor law's prohibition on gender wage discrimination applied to workers performing jobs under "comparable," rather than "similar," working conditions.

EFFECTIVE DATE: October 1, 2017

BACKGROUND

Gender Wage Discrimination

The state's labor law allows employees (or the labor commissioner) alleging gender wage discrimination to sue employers for lost wages, compensatory damages, attorney's fees and, in some instances, punitive damages (CGS § 31-76). However, employers with pay differentials can defend themselves by showing that the differentials are based on (1) seniority; (2) merit; (3) a system that measures production quantity or quality; or (4) bona fide factors such as job-related education, training, or experience (CGS § 31-75 (b)).

Employees alleging gender wage discrimination under the state's human rights law cannot sue their employers unless they first pursue their complaints through the Commission on Human Rights and Opportunities' administrative process or receive a release from the commission (CGS §§ 46a-94a and 46a-101).

Related Bill

HB 5210, reported favorably by the Labor and Public Employees Committee, prohibits employers from asking about a prospective employee's wage and salary history before negotiating his or her job offer and compensation. It also makes several changes to the defenses available to employers in a gender wage discrimination suit.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 13 Nay 0 (03/02/2017)