



House of Representatives

General Assembly

File No. 196

February Session, 2018

Substitute House Bill No. 5386

House of Representatives, April 4, 2018

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING VARIOUS PAY EQUITY AND FAIRNESS MATTERS.

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

1 Section 1. Section 31-40z of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2018*):

3 (a) As used in this section:

4 (1) "Employer" means any individual, corporation, limited liability
5 company, firm, partnership, voluntary association, joint stock
6 association, the state and any political subdivision thereof and any
7 public corporation within the state using the services of one or more
8 employees for pay;

9 (2) "Employee" means any individual employed or permitted to
10 work by an employer; and

11 (3) "Wages" means compensation for labor or services rendered by

12 an employee, whether the amount is determined on a time, task, piece,
13 commission or other basis of calculation.

14 (b) No employer shall:

15 (1) Prohibit an employee from disclosing or discussing the amount
16 of his or her wages or the wages of another employee of such
17 employer that have been disclosed voluntarily by such other
18 employee;

19 (2) Prohibit an employee from inquiring about the wages of another
20 employee of such employer;

21 (3) Require an employee to sign a waiver or other document that
22 denies the employee his or her right to disclose or discuss the amount
23 of his or her wages or the wages of another employee of such
24 employer that have been disclosed voluntarily by such other
25 employee;

26 (4) Require an employee to sign a waiver or other document that
27 denies the employee his or her right to inquire about the wages of
28 another employee of such employer;

29 (5) Inquire or direct a third party to inquire about a prospective
30 employee's wage and salary history before an offer of employment that
31 includes wages has been accepted by the prospective employee unless
32 a prospective employee has voluntarily disclosed such information,
33 except that this subdivision shall not apply to any actions taken by an
34 employer, employment agency or employee or agent thereof pursuant
35 to any federal or state law that specifically authorizes the disclosure or
36 verification of salary history for employment purposes. Nothing in this
37 section shall prohibit an employer from inquiring about compensation
38 structure, as long as such employer does not inquire about the value of
39 the elements of such compensation structure, except that an employer
40 may inquire about the value of stocks or equity;

41 [(5)] (6) Discharge, discipline, discriminate against, retaliate against
42 or otherwise penalize any employee who discloses or discusses the

43 amount of his or her wages or the wages of another employee of such
44 employer that have been disclosed voluntarily by such other
45 employee; or

46 ~~[(6)]~~ (7) Discharge, discipline, discriminate against, retaliate against
47 or otherwise penalize any employee who inquires about the wages of
48 another employee of such employer.

49 (c) Nothing in this section shall be construed to require any
50 employer or employee to disclose the amount of wages paid to any
51 employee.

52 (d) An action to redress a violation of subsection (b) of this section
53 may be maintained in any court of competent jurisdiction by any one
54 or more employees or prospective employees. An employer who
55 violates subsection (b) of this section may be found liable for
56 compensatory damages, attorney's fees and costs, punitive damages
57 and such legal and equitable relief as the court deems just and proper.

58 (e) No action shall be brought for any violation of subsection (b) of
59 this section except within two years after such violation.

60 (f) In a civil action alleging a violation of subsection (b) of this
61 section, an employer may file a motion in any court of competent
62 jurisdiction to disallow an award of compensatory and punitive
63 damages. The court shall grant the motion if the employer
64 demonstrates, by a preponderance of the evidence, that the employer
65 (1) completed, within three years before the date that the employee
66 filed such action, an equal pay analysis of the employer's pay practices
67 in good faith that was reasonable in detail and scope in light of the size
68 of the employer; and (2) eliminated the wage differentials for the
69 plaintiff. If the court grants the motion, the court may award back pay
70 only for the two-year period immediately preceding the filing of the
71 action and may award costs and reasonable attorney's fees, but may
72 not award compensatory or punitive damages. Evidence of an equal
73 pay analysis undertaken in accordance with this subsection shall be
74 inadmissible in any other proceeding.

75 Sec. 2. Subsection (b) of section 31-75 of the general statutes is
76 repealed and the following is substituted in lieu thereof (*Effective*
77 *October 1, 2018*):

78 (b) If an employee can demonstrate that his or her employer
79 discriminates on the basis of sex by paying wages to employees at the
80 employer's business at a rate less than the rate at which the employer
81 pays wages to employees of the opposite sex at such business for equal
82 work on a job, the performance of which requires equal skill, effort and
83 responsibility, and which are performed under similar working
84 conditions, such employer must demonstrate that such differential in
85 pay is made pursuant to (1) a seniority system, provided time spent on
86 leave due to a pregnancy-related condition or protected family and
87 medical leave shall not reduce seniority; (2) a merit system; (3) a
88 system which measures earnings by quantity or quality of production;
89 or (4) a differential system based upon a bona fide factor other than
90 sex, such as education, training or experience. Said bona fide factor
91 defense shall apply only if the employer demonstrates that such factor
92 (A) is not based upon or derived from a sex-based differential in
93 compensation, and (B) is job-related and consistent with business
94 necessity. Such defense shall not exist where the employee
95 demonstrates that an alternative employment practice exists that
96 would serve the same business purpose without producing such
97 differential and that the employer has refused to adopt such
98 alternative practice.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	31-40z
Sec. 2	<i>October 1, 2018</i>	31-75(b)

LAB *Joint Favorable Subst.*

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 prohibits employers from asking about a prospective employee's wage and salary history under certain circumstances and allows lawsuits over alleged violations. This does not result in any fiscal impact to the state or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis

sHB 5386

AN ACT CONCERNING VARIOUS PAY EQUITY AND FAIRNESS MATTERS.

SUMMARY

This bill generally prohibits employers, including the state and its political subdivisions, from asking about a prospective employee's wage and salary history before the prospective employee accepts an employment offer that includes wages. It allows exceptions (1) when a prospective employee voluntarily discloses his or her compensation history, (2) if the disclosure is specifically authorized by state or federal law, and (3) for certain types of compensation elements (e.g., stock value).

In a lawsuit alleging a violation of the bill or of existing law's prohibition on employers taking certain steps to limit their employees' ability to share information about their wages, the bill allows an employer to limit its damages if it can show that it (1) completed an equal pay analysis of its pay practices within three years before the suit was filed and (2) eliminated wage differentials for the plaintiff.

The bill also requires employers using a seniority system to defend themselves in certain gender wage discrimination lawsuits to include in an employee's seniority any time spent on protected family and medical leave or leave due to a pregnancy-related condition.

EFFECTIVE DATE: October 1, 2018

WAGE AND SALARY HISTORY

The bill prohibits employers from asking or directing a third-party to ask about a prospective employee's wage and salary history before the prospective employee accepts an employment offer that includes

wages. The prohibition does not apply (1) if the prospective employee voluntarily discloses his or her wage and salary history or (2) to any actions taken by an employer, employment agency, or its employees or agents under a federal or state law that specifically authorizes the disclosure or verification of salary history for employment purposes. The bill also allows an employer to ask about compensation structure, but the employer may not ask about the value of the compensation structure's elements, except for the value of stocks or equity.

Enforcement and Limited Damages

The bill allows prospective employees to bring a lawsuit within two years after an alleged violation of the bill's prohibition on asking about salary histories. Employers can be found liable for compensatory damages, attorney's fees and costs, punitive damages, and any legal and equitable relief the court deems just and proper.

In a lawsuit alleging a violation of the bill or of existing law's prohibition on employers taking certain steps to limit their employees' ability to share information about their wages, the bill allows an employer to file a motion in any court of competent jurisdiction to disallow an award of compensatory or punitive damages.

Under the bill, a court must grant the motion if the employer shows by a preponderance of evidence that it (1) eliminated wage differentials for the plaintiff and (2) completed an equal pay analysis of its pay practices within three years before the suit was filed. The equal pay analysis must have been performed in good faith and in reasonable detail and scope in light of the employer's size. It cannot be admitted as evidence in any other proceeding. If the employer is successful, the court may award back pay only for the two-year period immediately preceding the suit's filing, plus costs and attorney's fees, but it may not award compensatory or punitive damages.

GENDER WAGE DISCRIMINATION LAWSUITS

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)).

Under the bill, if an employer uses a seniority system to defend its pay differentials, an employee's time spent on leave due to a pregnancy-related condition or protected family and medical leave must not reduce seniority.

BACKGROUND

Related Bill

sSB 15, reported favorably by the Labor and Public Employees Committee, also generally prohibits employers from asking about a prospective employee's wage and salary history before the prospective employee accepts an employment offer that includes wages.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/20/2018)