

SB0210S01 compared with SB0210

~~{deleted text}~~ shows text that was in SB0210 but was deleted in SB0210S01.

Inserted text shows text that was not in SB0210 but was inserted into SB0210S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Jacob L. Anderegg proposes the following substitute bill:

EQUAL PAY AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to employee pay in the state.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires certain employers in the state to adopt and disclose to each employee uniform criteria that the employer uses to determine whether to change an employee's compensation or benefits based on the employee's performance;
- ▶ instructs the Department of Workforce Services to conduct a study on whether there is a difference in pay between men and women in the state;
- ▶ provides that the Department of Workforce Services shall create and maintain ~~{a~~ pay ~~{index}~~indices for certain occupations that ~~{states}~~state the ~~{average}~~current

SB0210S01 compared with SB0210

pay range in the state for each ~~{occupation based on years of experience in the}~~ occupation; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-1-104.5, as last amended by Laws of Utah 2015, Chapter 283

35A-4-312, as last amended by Laws of Utah 2016, Chapter 296

63I-2-235, as last amended by Laws of Utah 2016, Chapter 278

ENACTS:

34-52-101, Utah Code Annotated 1953

34-52-102, Utah Code Annotated 1953

34-52-201, Utah Code Annotated 1953

35A-5-501, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34-52-101** is enacted to read:

CHAPTER 52. EMPLOYEE PERFORMANCE ACT

Part 1. General Provisions

34-52-101. Title.

This chapter is known as the "Employee Performance Act."

Section 2. Section **34-52-102** is enacted to read:

34-52-102. Definitions.

As used in this chapter ~~{,}~~:

(1) "~~{employer}~~Employee" means an employee who works an average of at least 30 hours per week in a calendar year.

(2) "Employer" means a person that employs 15 or more individuals in the state for each working day in each of 20 weeks or more in the current or preceding calendar year.

SB0210S01 compared with SB0210

Section 3. Section **34-52-201** is enacted to read:

Part 2. Employee Evaluations

34-52-201. Written criteria required.

(1) Each employer shall adopt and disclose to each employee written criteria that the employer uses to determine whether to change an employee's compensation or benefits based on the employee's performance.

(2) An employer may adopt different criteria for each type of position, but shall apply the criteria uniformly to each employee that holds the type of position to which the criteria apply.

(3) An employer may not change the criteria described in the section that apply to an employee less than six months before the day on which the employer considers whether to change the employee's compensation or benefits based on the employee's performance.

Section 4. Section **35A-1-104.5** is amended to read:

35A-1-104.5. Other department duties -- Strategic plan for health system reform -- Reporting suspected misuse of a social security number -- Wage study.

(1) The department shall work with the Department of Health, the Insurance Department, the Governor's Office of Economic Development, and the Legislature to develop the health system reform in accordance with Title 63N, Chapter 11, Health System Reform Act.

(2) In the process of determining an individual's eligibility for a public benefit or service under this title or under federal law, if the department determines that a valid Social Security number is being used by an unauthorized individual, the department shall:

(a) inform the individual who the department determines to be the likely actual owner of the social security number or, if the likely actual owner is a minor, the minor's parent or guardian, of the suspected misuse; and

(b) subject to federal law, provide information of the suspected misuse to an appropriate law enforcement agency responsible for investigating identity fraud.

(3) If the department learns or determines that providing information under Subsection (2)(b) is prohibited by federal law, the department shall notify the Legislative Management Committee.

(4) (a) The department shall conduct a study that analyzes any difference in pay

SB0210S01 compared with SB0210

between men and women in the state.

(b) The study described in Subsection (4)(a) shall:

(i) use the most recent wage data for workers in the state available to the department;

and

(ii) to the extent possible, control for other variables, including education, years of experience, occupation, and industry.

(c) The department shall present the study described in this Subsection (4) to the Economic Development and Workforce Services Interim Committee and the Women in Economy Commission no later than November 30, 2018.

(d) The Driver License Division shall, in accordance with federal law, coordinate with the department to provide the department information necessary to complete the study described in this Subsection (4).

Section 5. Section **35A-4-312** is amended to read:

35A-4-312. Records.

(1) (a) An employing unit shall keep true and accurate work records containing information the department may prescribe by rule.

(b) A record shall be open to inspection and subject to being copied by the division or its authorized representatives at a reasonable time and as often as necessary.

(c) An employing unit shall make a record available in the state for three years after the calendar year in which the services are rendered.

(2) The division may require from an employing unit a sworn or unsworn report with respect to a person employed by the employing unit that the division considers necessary for the effective administration of this chapter.

(3) Except as provided in this section or in Sections 35A-4-103 and 35A-4-106, information obtained under this chapter or obtained from an individual may not be published or open to public inspection in a manner revealing the employing unit's or individual's identity.

(4) (a) The information obtained by the division under this section may not be used in court or admitted into evidence in an action or proceeding, except:

(i) in an action or proceeding arising out of this chapter;

(ii) if the Labor Commission enters into a written agreement with the division under Subsection (6)(b), in an action or proceeding by the Labor Commission to enforce:

SB0210S01 compared with SB0210

- (A) Title 34, Chapter 23, Employment of Minors;
- (B) Title 34, Chapter 28, Payment of Wages;
- (C) Title 34, Chapter 40, Utah Minimum Wage Act; or
- (D) Title 34A, Utah Labor Code;

(iii) under the terms of a court order obtained under Subsection 63G-2-202(7) and Section 63G-2-207; or

(iv) under the terms of a written agreement between the Office of State Debt Collection and the division as provided in Subsection (5).

(b) The information obtained by the division under this section shall be disclosed to:

(i) a party to an unemployment insurance hearing before an administrative law judge of the department or a review by the Workforce Appeals Board to the extent necessary for the proper presentation of the party's case; or

(ii) an employer, upon request in writing for information concerning a claim for a benefit with respect to a former employee of the employer.

(5) The information obtained by the division under this section may be disclosed to:

(a) an employee of the department in the performance of the employee's duties in administering this chapter or other programs of the department;

(b) an employee of the Labor Commission for the purpose of carrying out the programs administered by the Labor Commission;

(c) an employee of the Department of Commerce for the purpose of carrying out the programs administered by the Department of Commerce;

(d) an employee of the governor's office or another state governmental agency administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation;

(e) an employee of another governmental agency that is specifically identified and authorized by federal or state law to receive the information for the purposes stated in the law authorizing the employee of the agency to receive the information;

(f) an employee of a governmental agency or workers' compensation insurer to the extent the information will aid in:

(i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against:

(A) a workers' compensation program; or

SB0210S01 compared with SB0210

- (B) public assistance funds; or
- (ii) the recovery of overpayments of workers' compensation or public assistance funds;
- (g) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or in aid of a felony criminal investigation;
- (h) an employee of the State Tax Commission or the Internal Revenue Service for the purposes of:
 - (i) audit verification or simplification;
 - (ii) state or federal tax compliance;
 - (iii) verification of a code or classification of the:
 - (A) 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or
 - (B) 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
 - (iv) statistics;
- (i) an employee or contractor of the department or an educational institution, or other governmental entity engaged in workforce investment and development activities under the Workforce Innovation and Opportunity Act, 29 U.S.C. Sec. 3101 et seq., for the purpose of:
 - (i) coordinating services with the department;
 - (ii) evaluating the effectiveness of those activities; and
 - (iii) measuring performance;
- (j) an employee of the Governor's Office of Economic Development, for the purpose of periodically publishing in the Directory of Business and Industry, the name, address, telephone number, number of employees by range, code or classification of an employer, and type of ownership of Utah employers;
- (k) the public for any purpose following a written waiver by all interested parties of their rights to nondisclosure;
- (l) an individual whose wage data is submitted to the department by an employer, if no information other than the individual's wage data and the identity of the employer who submitted the information is provided to the individual;
- (m) an employee of the Insurance Department for the purpose of administering Title 31A, Chapter 40, Professional Employer Organization Licensing Act;

SB0210S01 compared with SB0210

(n) an employee of the Office of State Debt Collection for the purpose of collecting state accounts receivable as provided in Section 63A-3-502;

(o) a creditor, under a court order, to collect on a judgment as provided in Section 35A-4-314; ~~or~~

(p) an employee of the Wage and Hour Division of the United States Department of Labor for the purpose of carrying out the programs administered by the Wage and Hour Division as permitted under 20 C.F.R. 603.5(e), if the information is subject to the payment of costs described in 20 C.F.R. 603.8(d) and:

(i) is limited to:

(A) the name and identifying information of an employer found by the department to have misclassified one or more workers under Subsection 35A-4-204(3);

(B) the total number of misclassified workers for that employer; and

(C) the aggregate amount of misclassified wages for that employer;

(ii) an employer is given the opportunity to cure a misclassification of one or more workers, in a manner established by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, before the information is disclosed as described in this Subsection (5)(p); and

(iii) an annual report regarding the benefit to the state from disclosure of information under this Subsection (5)(p) is provided to the department for inclusion in the department's annual report described in Section 35A-1-109[-]; or

(q) an employee of the Driver License Division for purposes of obtaining data necessary to complete the study described in Subsection 35A-1-104.5(4).

(6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5), with the exception of Subsections (5)(a), (g), and (o), may be made if:

(a) the division determines that the disclosure will not have a negative effect on:

(i) the willingness of employers to report wage and employment information; or

(ii) the willingness of individuals to file claims for unemployment benefits; and

(b) the agency enters into a written agreement with the division in accordance with rules made by the department.

(7) (a) The employees of a division of the department other than the Workforce Research and Analysis Division and the Unemployment Insurance Division or an agency

SB0210S01 compared with SB0210

receiving private information from the division under this chapter are subject to the same requirements of privacy and confidentiality and to the same penalties for misuse or improper disclosure of the information as employees of the division.

(b) Use of private information obtained from the department by a person or for a purpose other than one authorized in Subsection (4) or (5) violates Subsection 76-8-1301(4).

Section 6. Section **35A-5-501** is enacted to read:

Part 5. Occupational Pay Data

35A-5-501. Creation and maintenance of pay indices.

(1) (a) For each occupation in the Bureau of Labor Statistic's Standard Occupational Classification System, the department shall create and maintain an index of the current pay range for individuals employed in the occupation in the state.

(b) For each index described in Subsection (1)(a), the department shall include ~~fa separate pay range for at least every five years;~~ the percentile distribution of ~~{experience}~~ wages in the occupation.

(2) The department shall:

(a) update each index described in Subsection (1) no later than July 1 each year; and

(b) make each index described in Subsection (1) available to the public on the department's website.

(3) The department shall prepare and conduct an advertising campaign to promote the availability and utility of the indices described in Subsection (1).

Section 7. Section **63I-2-235** is amended to read:

63I-2-235. Repeal dates -- Title 35A.

(1) Subsection 35A-1-104.5(4) is repealed December 1, 2018.

(2) Subsection 35A-4-312(5)(q) is repealed December 1, 2018.

~~[(+)]~~ (3) Subsection 35A-8-604(6) is repealed October 1, 2020.

~~[(2) Title 35A, Chapter 8, Part 11, Methamphetamine Housing Reconstruction and Rehabilitation Account Act, is repealed July 1, 2015.]~~

~~[(3) Section 35A-12-402 is repealed December 31, 2015.]~~

†

SB0210S01 compared with SB0210

Legislative Review Note

Office of Legislative Research and General Counsel