

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 for certain occupations that states the average 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:



28 35A-1-104.5, as last amended by Laws of Utah 2015, Chapter 283

29 35A-4-312, as last amended by Laws of Utah 2016, Chapter 296

30 63I-2-235, as last amended by Laws of Utah 2016, Chapter 278

31 ENACTS:

32 34-52-101, Utah Code Annotated 1953

33 34-52-102, Utah Code Annotated 1953

34 34-52-201, Utah Code Annotated 1953

35 35A-5-501, Utah Code Annotated 1953



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

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

39 **CHAPTER 52. EMPLOYEE PERFORMANCE ACT**

40 **Part 1. General Provisions**

41 **34-52-101. Title.**

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

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

44 **34-52-102. Definitions.**

45 As used in this chapter, "employer" means a person that employs 15 or more
46 individuals in the state for each working day in each of 20 weeks or more in the current or
47 preceding calendar year.

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

49 **Part 2. Employee Evaluations**

50 **34-52-201. Written criteria required.**

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

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

57 (3) An employer may not change the criteria described in the section that apply to an
58 employee less than six months before the day on which the employer considers whether to

59 change the employee's compensation or benefits based on the employee's performance.

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

61 **35A-1-104.5. Other department duties -- Strategic plan for health system reform**
62 **-- Reporting suspected misuse of a social security number -- Wage study.**

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

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

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

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

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

78 (4) (a) The department shall conduct a study that analyzes any difference in pay
79 between men and women in the state.

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

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

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

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

88 (d) The Driver License Division shall, in accordance with federal law, coordinate with
89 the department to provide the department information necessary to complete the study

90 described in this Subsection (4).

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

92 **35A-4-312. Records.**

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

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

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

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

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

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

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

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

110 (A) Title 34, Chapter 23, Employment of Minors;

111 (B) Title 34, Chapter 28, Payment of Wages;

112 (C) Title 34, Chapter 40, Utah Minimum Wage Act; or

113 (D) Title 34A, Utah Labor Code;

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

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

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

119 (i) a party to an unemployment insurance hearing before an administrative law judge of
120 the department or a review by the Workforce Appeals Board to the extent necessary for the

121 proper presentation of the party's case; or
122 (ii) an employer, upon request in writing for information concerning a claim for a
123 benefit with respect to a former employee of the employer.
124 (5) The information obtained by the division under this section may be disclosed to:
125 (a) an employee of the department in the performance of the employee's duties in
126 administering this chapter or other programs of the department;
127 (b) an employee of the Labor Commission for the purpose of carrying out the programs
128 administered by the Labor Commission;
129 (c) an employee of the Department of Commerce for the purpose of carrying out the
130 programs administered by the Department of Commerce;
131 (d) an employee of the governor's office or another state governmental agency
132 administratively responsible for statewide economic development, to the extent necessary for
133 economic development policy analysis and formulation;
134 (e) an employee of another governmental agency that is specifically identified and
135 authorized by federal or state law to receive the information for the purposes stated in the law
136 authorizing the employee of the agency to receive the information;
137 (f) an employee of a governmental agency or workers' compensation insurer to the
138 extent the information will aid in:
139 (i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against:
140 (A) a workers' compensation program; or
141 (B) public assistance funds; or
142 (ii) the recovery of overpayments of workers' compensation or public assistance funds;
143 (g) an employee of a law enforcement agency to the extent the disclosure is necessary
144 to avoid a significant risk to public safety or in aid of a felony criminal investigation;
145 (h) an employee of the State Tax Commission or the Internal Revenue Service for the
146 purposes of:
147 (i) audit verification or simplification;
148 (ii) state or federal tax compliance;
149 (iii) verification of a code or classification of the:
150 (A) 1987 Standard Industrial Classification Manual of the federal Executive Office of
151 the President, Office of Management and Budget; or

152 (B) 2002 North American Industry Classification System of the federal Executive
153 Office of the President, Office of Management and Budget; and
154 (iv) statistics;

155 (i) an employee or contractor of the department or an educational institution, or other
156 governmental entity engaged in workforce investment and development activities under the
157 Workforce Innovation and Opportunity Act, 29 U.S.C. Sec. 3101 et seq., for the purpose of:
158 (i) coordinating services with the department;
159 (ii) evaluating the effectiveness of those activities; and
160 (iii) measuring performance;

161 (j) an employee of the Governor's Office of Economic Development, for the purpose of
162 periodically publishing in the Directory of Business and Industry, the name, address, telephone
163 number, number of employees by range, code or classification of an employer, and type of
164 ownership of Utah employers;

165 (k) the public for any purpose following a written waiver by all interested parties of
166 their rights to nondisclosure;

167 (l) an individual whose wage data is submitted to the department by an employer, if no
168 information other than the individual's wage data and the identity of the employer who
169 submitted the information is provided to the individual;

170 (m) an employee of the Insurance Department for the purpose of administering Title
171 31A, Chapter 40, Professional Employer Organization Licensing Act;

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

174 (o) a creditor, under a court order, to collect on a judgment as provided in Section
175 [35A-4-314](#); [or]

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

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

183 (B) the total number of misclassified workers for that employer; and
184 (C) the aggregate amount of misclassified wages for that employer;
185 (ii) an employer is given the opportunity to cure a misclassification of one or more
186 workers, in a manner established by division rule in accordance with Title 63G, Chapter 3,
187 Utah Administrative Rulemaking Act, before the information is disclosed as described in this
188 Subsection (5)(p); and

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

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

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

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

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

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

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

201 (7) (a) The employees of a division of the department other than the Workforce
202 Research and Analysis Division and the Unemployment Insurance Division or an agency
203 receiving private information from the division under this chapter are subject to the same
204 requirements of privacy and confidentiality and to the same penalties for misuse or improper
205 disclosure of the information as employees of the division.

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

208 Section 6. Section [35A-5-501](#) is enacted to read:

209 **Part 5. Occupational Pay Data**

210 **35A-5-501. Creation and maintenance of pay indices.**

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

214 (b) For each index described in Subsection (1)(a), the department shall include a
215 separate pay range for at least every five years of experience in the occupation.

216 (2) The department shall:

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

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

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

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

223 **63I-2-235. Repeal dates -- Title 35A.**

224 (1) Subsection [35A-1-104.5](#)(4) is repealed December 1, 2018.

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

226 [~~(1)~~] (3) Subsection [35A-8-604](#)(6) is repealed October 1, 2020.

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

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

Legislative Review Note
Office of Legislative Research and General Counsel