

**Representative Gay Lynn Bennion** proposes the following substitute bill:

**STATE EMPLOYEE WAGE DISCRIMINATION AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gay Lynn Bennion**

Senate Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill enacts provisions prohibiting wage discrimination on the basis of sex.

**Highlighted Provisions:**

This bill:

- ▶ prohibits wage discrimination for state employees on the basis of sex;
- ▶ prohibits a state employer from seeking wage history or relying on wage history in determining wage rates;
- ▶ prohibits a state employer from retaliating against a state employee or prospective state employee for certain actions, including:
  - failing to disclose wage history;
  - invoking provisions related to wage discrimination; or
  - assisting in the enforcement of provisions prohibiting wage discrimination;
- ▶ provides a private right of action for aggrieved state employees with a one-year statute of limitations;
- ▶ defines terms; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 ENACTS:

30 [67-21-11](#), Utah Code Annotated 1953

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

33 Section 1. Section [67-21-11](#) is enacted to read:

34 **[67-21-11. Wage discrimination for state employees prohibited -- Rulemaking](#)**  
35 **authority -- Enforcement -- Employer liability.**

36 (1) As used in this section:

37 (a) "Liquidated damages" means damages to compensate a state employee for the delay  
38 in receiving amounts due as a result of a state employer's violation of this section.

39 (b) "Local education agency" means a school district, a charter school, or the Utah  
40 Schools for the Deaf and the Blind.

41 (c) "Political subdivision" means a county, city, town, redevelopment agency, special  
42 improvement district, or taxing district.

43 (d) (i) "State agency means:

44 (A) the state;

45 (B) a department, commission, board, council, agency, officer, corporation, fund,  
46 division, office, committee, authority, laboratory, library, unit, bureau, panel, or other  
47 administrative unit of the state;

48 (C) a local education agency; or

49 (D) an institution of higher education listed in Section [53B-1-102](#).

50 (ii) "State agency" does not mean:

51 (A) a political subdivision; or

52 (B) an administrative subdivision of a political subdivision.

53 (e) (i) "State employee" means a person employed by a state agency.

54 (ii) "State employee" does not include a state officer described in Sections [67-22-1](#) or  
55 [67-22-2](#).

56 (f) "State employer" means an employer that is a state agency.

57 (g) "Wage rate" means:  
58 (i) for a state employee paid on an hourly basis, the hourly compensation paid to the  
59 state employee plus the value per hour of all other compensation and benefits received by the  
60 state employee from the state employer; and

61 (ii) for a state employee paid on a salary basis, the total of all compensation and  
62 benefits received by the state employee from the state employer.

63 (2) Except as provided in Subsection (3), a state employer may not discriminate  
64 between state employees on the basis of sex, or on the basis of sex in combination with another  
65 protected status described in Subsection 34A-5-106(1)(a)(i), by paying a state employee of one  
66 sex a wage rate that is less than the wage rate paid to a state employee of a different sex for  
67 substantially similar work, regardless of job title, based on a combination of:

68 (a) skill;

69 (b) effort, including consideration of shift work; and

70 (c) responsibility.

71 (3) A state employer does not violate Subsection (2), if the state employer  
72 demonstrates that:

73 (a) a wage rate differential is based on:

74 (i) a seniority system;

75 (ii) a merit system;

76 (iii) a system that measures earnings by quantity or quality of production;

77 (iv) the geographic location where work is performed;

78 (v) education, training, or experience to the extent that education, training, or  
79 experience are reasonably related to the work; or

80 (vi) travel, if travel is a regular and necessary condition of the work performed;

81 (b) the state employer reasonably applies each factor described in Subsection (3)(a) on  
82 which the state employer relies;

83 (c) each factor described in Subsection (3)(a) on which the state employer relies  
84 accounts for the entire wage differential; and

85 (d) the state employer did not rely on prior wage rate history to justify a differential in  
86 current wage rates.

87 (4) A state employer may not:

88 (a) seek the wage rate history of a prospective state employee or rely on the wage rate  
89 history of a prospective state employee to determine a wage rate;

90 (b) discriminate or retaliate against a prospective state employee for failing to disclose  
91 the prospective state employee's wage rate history;

92 (c) discharge, discriminate against, or retaliate against a state employee for:

93 (i) invoking this section on behalf of the state employee or another person; or

94 (ii) assisting in the enforcement of this Subsection (4);

95 (d) discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere  
96 with a state employee or other person because the state employee or other person inquired  
97 about, disclosed, compared, or otherwise discussed the state employee's wage rate;

98 (e) prohibit as a condition of employment a state employee from disclosing the state  
99 employee's wage rate; or

100 (f) require a state employee to sign a waiver or other document that:

101 (i) prohibits the state employee from disclosing wage rate information; or

102 (ii) purports to deny the state employee the right to disclose the state employee's wage  
103 rate information.

104 (5) (a) A person claiming to be aggrieved by a violation of this section may bring an  
105 action in district court no later than one year after the violation occurs.

106 (b) A violation of Subsection (2) occurs on each occasion that a person is affected by  
107 wage discrimination, including on each occasion that a discriminatory wage is paid.

108 (c) A person aggrieved by a violation of this section may obtain relief for back pay for  
109 the entire time the violation continues, not to exceed three years.

110 (d) If an action is commenced under this Subsection (5), any party to the action may  
111 demand a trial by jury.

112 (6) (a) A state employer who violates Subsection (2) is liable for:

113 (i) economic damages in an amount equal to the difference between the amount that the  
114 state employer paid to the complaining state employee and the amount that the state employee  
115 would have received but for the violation; and

116 (ii) except as provided in Subsection (6)(b), liquidated damages in an amount equal to  
117 the state employee's economic damages.

118 (b) The court shall not award liquidated damages if a state employer demonstrates that:

119 (i) the act or omission giving rise to a violation of Subsection (2) was in good faith;  
120 and

121 (ii) the state employer had a reasonable basis for believing that the state employer did  
122 not violate Subsection (2).

123 (c) In determining whether a state employer's violation of Subsection (2) was in good  
124 faith, the court may consider evidence that within two years prior to the date of the  
125 commencement of an action described in Subsection (5), the state employer completed a  
126 thorough and comprehensive pay audit of the state employer's workforce for the purpose of  
127 identifying and remedying unlawful pay disparities.

128 (d) Liquidated damages does not constitute a penalty to the state employer.

129 (7) A state employer that violates any provision of this section is liable for:

130 (a) legal and equitable relief, including:

131 (i) employment;

132 (ii) reinstatement;

133 (iii) promotion;

134 (iv) wage rate increase;

135 (v) payment of lost wage rates; or

136 (vi) liquidated damages; and

137 (b) an aggrieved person's reasonable costs, including attorney fees.

138 (8) Nothing in this section precludes:

139 (a) an aggrieved person from exercising the person's rights under Section [34A-5-107](#);

140 or

141 (b) a state employee from asserting any other available statutory or common law  
142 claims.