

HB0346S01 compared with HB0346

~~text~~ shows text that was in HB0346 but was deleted in HB0346S01.

text shows text that was not in HB0346 but was inserted into HB0346S01.

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.

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;

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- ▶ 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

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

67-21-11, Utah Code Annotated 1953

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

Section 1. Section **67-21-11** is enacted to read:

67-21-11. Wage discrimination for state employees prohibited -- Rulemaking authority -- Enforcement -- Employer liability.

(1) As used in this section:

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

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

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

(d) (i) "State agency means:

(A) the state;

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

(C) a local education agency; or

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

(ii) "State agency" does not mean:

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(A) a political subdivision; or

(B) an administrative subdivision of a political subdivision.

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

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

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

(g) "Wage rate" means:

(i) for a state employee paid on an hourly basis, the hourly compensation paid to the state employee plus the value per hour of all other compensation and benefits received by the state employee from the state employer; and

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

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

(a) skill;

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

(c) responsibility.

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

(a) a wage rate differential is based on:

(i) a seniority system;

(ii) a merit system;

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

(iv) the geographic location where work is performed;

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

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

(b) the state employer reasonably applies each factor described in Subsection (3)(a) on

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which the state employer relies;

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

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

(4) A state employer may not:

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

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

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

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

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

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

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

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

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

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

~~{ (5) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:~~

~~— (a) administer the provisions of this section; and~~

~~— (b) establish and implement a process for submitting and investigating complaints of alleged violations of this section.~~

‡ ~~(6)~~(5) (a) A person claiming to be aggrieved by a violation of this section may bring an action in district court no later than one year after the violation occurs.

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

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

(d) If an action is commenced under this Subsection (~~f6~~5), any party to the action may demand a trial by jury.

(~~f7~~6) (a) A state employer who violates Subsection (2) is liable for:

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

(ii) except as provided in Subsection (~~f7~~6)(b), liquidated damages in an amount equal to the state employee's economic damages.

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

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

and

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

(c) In determining whether a state employer's violation of Subsection (2) was in good faith, the court may consider evidence that within two years prior to the date of the commencement of an action described in Subsection (~~f6~~5), the state employer completed a thorough and comprehensive pay audit of the state employer's workforce for the purpose of identifying and remedying unlawful pay disparities.

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

(~~f8~~7) A state employer that violates any provision of this section is liable for:

(a) legal and equitable relief, including:

(i) employment;

(ii) reinstatement;

(iii) promotion;

(iv) wage rate increase;

(v) payment of lost wage rates; or

(vi) liquidated damages; and

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

(~~f9~~8) Nothing in this section precludes:

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

or

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