

UTAH ANTIDISCRIMINATION ACT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kathleen A. Riebe

House Sponsor: _____

LONG TITLE**General Description:**

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

Highlighted Provisions:

This bill:

- ▶ prohibits an employer from discriminating between employees on the basis of sex by paying an employee of one sex a wage rate that is less than the wage rate paid to an employee of a different sex for substantially similar work (wage discrimination);
- ▶ prohibits an employer from:
 - seeking wage history or relying on wage history in determining wage rates; and
 - retaliating against an employee or prospective 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 employees with a one-year statute of limitations;
- ▶ provides rulemaking authority; and
- ▶ defines terms.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

34A-5-113, Utah Code Annotated 1953

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

Section 1. Section **34A-5-113** is enacted to read:

34A-5-113. Wage discrimination on the basis of sex prohibited -- Rulemaking authority -- Enforcement -- Employer liability.

(1) As used in this section:

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

(b) "Wage rate" means:

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

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

(2) Except as provided in Subsection (3), an employer may not discriminate between 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 an employee of one sex a wage rate that is less than the wage rate paid to an 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) An employer does not violate Subsection (2) if the 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;

- 59 (iv) the geographic location where work is performed;
60 (v) education, training, or experience to the extent that education, training, or
61 experience are reasonably related to the work; or
62 (vi) travel, if travel is a regular and necessary condition of the work performed;
63 (b) the employer reasonably applies each factor described in Subsection (3)(a) on
64 which the state employer relies;
65 (c) each factor described in Subsection (3)(a) on which the employer relies accounts for
66 the entire wage differential; and
67 (d) the employer did not rely on prior wage rate history to justify a differential in
68 current wage rates.
69 (4) An employer may not:
70 (a) seek the wage rate history of a prospective employee or rely on the wage rate
71 history of a prospective state employee to determine a wage rate;
72 (b) discriminate or retaliate against a prospective employee for failing to disclose the
73 prospective employee's wage rate history;
74 (c) discharge, discriminate against, or retaliate against an employee for:
75 (i) invoking this section on behalf of the employee or another person; or
76 (ii) assisting in the enforcement of this Subsection (4);
77 (d) discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere
78 with an employee or other person because the state employee or other person inquired about,
79 disclosed, compared, or otherwise discussed the state employee's wage rate;
80 (e) prohibit as a condition of employment an employee from disclosing the state
81 employee's wage rate; or
82 (f) require an employee to sign a waiver or other document that:
83 (i) prohibits the employee from disclosing wage rate information; or
84 (ii) purports to deny the employee the right to disclose the employee's wage rate
85 information.
86 (5) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
87 Administrative Rulemaking Act, to:
88 (a) administer the provisions of this section; and
89 (b) establish and implement a process for submitting and investigating complaints of

alleged violations of this section.

(6) (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.

(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 (6), any party to the action may demand a trial by jury.

(7) (a) An employer who violates Subsection (2) is liable for:

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

(ii) except as provided in Subsection (7)(b), liquidated damages in an amount equal to the employee's economic damages.

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

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

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

(c) In determining whether an 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 (6), the employer completed a thorough and comprehensive pay audit of the employer's workforce for the purpose of identifying and remedying unlawful pay disparities.

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

(8) An employer that violates any provision of this section is liable for:

(a) legal and equitable relief, including:

(i) employment;

(ii) reinstatement;

(iii) promotion;

- 121 (iv) wage rate increase;
122 (v) payment of lost wage rates; or
123 (vi) liquidated damages; and
124 (b) an aggrieved person's reasonable costs, including attorney fees.
125 (9) Nothing in this section precludes:
126 (a) an aggrieved person from exercising the person's rights under Section [34A-5-107](#);
127 or
128 (b) an employee from asserting any other available statutory or common law claims.