

SENATE BILL NO. 148

INTRODUCED BY S. MALEK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PAY EQUITY LAWS; PROVIDING PAY  
5 EQUITY REQUIREMENTS AND GUIDELINES; REVISING STATE COMPARABLE WORTH PROVISIONS;  
6 PROHIBITING NONDISCLOSURE OF PAY INFORMATION EXCEPT FOR JOBS SUBJECT TO PUBLIC  
7 RECORDS LAWS; REQUIRING NOTIFICATION OF RIGHTS BY EMPLOYERS; EXEMPTING PAY EQUITY  
8 COMPLAINTS FROM THE MONTANA HUMAN RIGHTS COMMISSION'S EXCLUSIVE REMEDY; PROVIDING  
9 PENALTIES AND AFFIRMATIVE DEFENSE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING  
10 SECTIONS 2-18-208, 2-18-209, 39-3-104, AND 49-2-512, MCA."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **Section 1.** Section 2-18-208, MCA, is amended to read:

15 **"2-18-208. Comparable worth work.** The department of administration shall, in its continuous efforts  
16 to enhance the current classification plan and pay schedules, work toward the goal of ~~establishing~~ having a state  
17 standard of equal pay for comparable worth work. This standard for the classification plan ~~shall be reached by~~  
18 seeks, in the task of classifying positions, to:

- 19 (1) ~~eliminating, in the classification of positions,~~ eliminate the use of judgments and factors that contain  
20 inherent biases based on sex; and  
21 (2) ~~comparing, in the classification of positions,~~ weigh the factors for determining job worth across  
22 occupational groups ~~whenever those to determine skill requirements, available labor supply, and other extrinsic~~  
23 values to help assess pay values based on objective criteria other than values associated with groups are  
24 typically dominated by males or females."

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26 **Section 2.** Section 2-18-209, MCA, is amended to read:

27 **"2-18-209. Periodic evaluation.** The department of administration shall periodically evaluate the extent  
28 to which Montana's classification plan, pay schedules, and statutes adhere to or fall short of the standard of equal  
29 pay for comparable ~~worth work.~~ The department ~~may~~ shall make recommendations to the legislature ~~regarding~~  
30 impediments to meeting for achieving this standard if the periodic evaluation indicates pay inequities."



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2 **Section 3.** Section 39-3-104, MCA, is amended to read:

3 **"39-3-104. Equal pay for women for equivalent service -- remedies.** (1) (a) It is unlawful for the state  
4 or any county, municipal entity, school district, public or private corporation, person, or firm to employ ~~women~~ a  
5 woman in any occupation within the state for compensation less than that paid to ~~men~~ a man for equivalent  
6 service or for the same amount or class of work or labor in the same industry, school, establishment, office, or  
7 place of employment of any kind or description.

8 (b) It is unlawful for any entity mentioned in subsection (1)(a) to employ a man in any occupation within  
9 the state for compensation less than that paid to a woman for equivalent service or for the same amount or class  
10 of work or labor in the same industry, school, establishment, office, or place of employment of any kind or  
11 description.

12 (c) A wage differential is allowed if one or more conditions in [section 5(2)] apply.

13 (2) If the state or any county, municipal entity, school district, public or private corporation, person, or  
14 firm violates any of the provisions of subsection (1), it is guilty of a misdemeanor and upon conviction thereof shall  
15 be fined not less than \$25 or more than \$500 for each offense.

16 (3) An individual may use the remedies provided in [sections 4 through 10] for suspected violations of  
17 subsection (1)."

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19 NEW SECTION. Section 4. Short title. [Sections 4 through 10] may be cited as the "Montana Pay  
20 Equity Act".

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22 NEW SECTION. Section 5. Discrimination based on gender prohibited for comparable work --  
23 conditions for exceptions. (1) An employer may not discriminate in any way on the basis of gender in the  
24 payment of wages or other compensation, including benefits and bonuses, or pay an individual a salary or wage  
25 rate less than the salary or wage rate paid to employees of a different gender for comparable work.

26 (2) Standardized application of the conditions listed in subsections (2)(a) through (2)(e) constitutes  
27 exceptions to subsection (1). Variations in wages are allowed for:

28 (a) a bona fide system rewarding seniority with the employer. However, leave due to a pregnancy-related  
29 condition or other protected parental, family, or medical leave may not be used to reduce seniority.

30 (b) a bona fide, objective merit system;

- 1 (c) a bona fide system that measures earnings by quantity or quality of production or sales;
- 2 (d) incentives associated with performing a job in a geographic location for which the consumer price
- 3 index, as published by the bureau of labor statistics of the United States department of labor, has indicated a
- 4 different cost of living than for the geographic location of the majority of staff members; or
- 5 (e) education, training, or experience to the extent these factors are reasonably related to the particular
- 6 job and consistent with business necessity.

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8 **NEW SECTION. Section 6. Prohibition against nondisclosure -- exception -- rulemaking.** (1) An

9 employer may not:

10 (a) require as a condition of employment that an employee refrain from inquiring about, discussing, or

11 disclosing information about either the employee's own wages or another employee's wages. This subsection

12 (1)(a) recognizes an employee's constitutional right to free speech.

13 (b) screen job applicants based on their wage or salary histories, including by requiring that an

14 applicant's prior wages or salary history satisfy minimum or maximum criteria or by requesting or requiring as a

15 condition of being interviewed or of continuing to be considered for an offer of employment that an applicant

16 disclose prior wages or salary history;

17 (c) seek the salary history of a prospective employee from a current or former employer. However, a

18 prospective employee may provide written authorization to a prospective employer to confirm prior wages or

19 salary history only after an offer of employment has been made to the prospective employee.

20 (d) discharge or in any other manner retaliate against an employee because the employee:

21 (i) opposed an act or practice made unlawful by [sections 4 through 10];

22 (ii) made or was about to make a complaint or caused or was about to cause to be instituted a proceeding

23 under [sections 4 through 10];

24 (iii) testified, assisted, or participated, or was about to testify, assist, or participate, in any manner in an

25 investigation or proceeding under [section 5] or this section; or

26 (iv) as an employer not exempt under subsection (4), disclosed the employee's wages, benefits, or other

27 compensation, or inquired about or discussed the wages of another employee.

28 (2) An employer may not contract out to a third party or to a human resources employee as a way to

29 exempt itself from this section.

30 (3) Except as provided in subsection (4), an employer may prohibit a human resources employee or

1 another employee whose job responsibilities require access to other employees' compensation information from  
 2 disclosing wage or salary information of an employee without prior written consent from the employee whose  
 3 information is sought or requested.

4 (4) Public employers may release salary and other compensation information for public employees under  
 5 rules adopted by the department of administration to treat salary information as a public record. The department  
 6 of administration has rulemaking authority to implement this subsection.

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8 **NEW SECTION. Section 7. Penalties -- venue -- filing -- exclusions -- attorney fees.** (1) An employer  
 9 who violates [section 5 or 6] is liable to pay the affected employee the amount of the employee's unpaid wages  
 10 plus, subject to [section 8], an equal amount of liquidated damages.

11 (2) (a) An aggrieved employee may file an action in a court of competent jurisdiction to determine if the  
 12 employee's pay was less than another employee's pay for comparable work and not subject to any of the  
 13 conditions in [section 5] for wage differentials. An employee may file an action individually on the employee's own  
 14 behalf or on behalf of other, similarly situated employees. The attorney general may also file an action on behalf  
 15 of similarly situated employees.

16 (b) An employee who brings an action under [section 5 or 6] may not file an action under Title 49, and  
 17 the exclusive remedy provisions of 49-2-512 do not apply.

18 (c) If an employee files a complaint and brings a successful action in federal court under 29 U.S.C.  
 19 206(d), the employee shall return to the employer the amounts recovered under this section or the amounts  
 20 recovered under federal law, whichever is less.

21 (3) The following do not constitute a defense to an action filed under subsection (2):

22 (a) an agreement in which an employee agrees with the employer to work for less than the wage to which  
 23 the employee is entitled under [section 5]; or

24 (b) an employee's previous wage or salary history.

25 (4) A court that determines an employee or class of employees is entitled to unpaid wages and damages  
 26 may also award reasonable attorney fees and costs of the action. For an action brought by the attorney general,  
 27 the cost of the action and attorney fees must be deposited into the major litigation account in the department of  
 28 justice.

29 (5) (a) An action under [section 5 or 6] must be instituted within 3 years after the date of the alleged  
 30 violation.

- 1 (b) The date of the alleged violation is considered to be:
- 2 (i) the date when a discriminatory compensation decision or other practice is adopted;
- 3 (ii) the date when an employee becomes subject to a discriminatory compensation decision or other
- 4 practice; or
- 5 (iii) the date when an employee is affected by application of a discriminatory compensation decision or
- 6 practice, including each time a wage, benefit, or other compensation is paid with an impact in whole or in part
- 7 from the decision or practice.

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9 **NEW SECTION. Section 8. Affirmative defense -- rulemaking.** (1) An employer against whom an

10 action is brought alleging a violation of [section 5 or 6] has an affirmative defense to liability and to a pay

11 discrimination claim if, within the previous 3 years and prior to the commencement of an action by an employee

12 under [section 5 or 6], the employer:

- 13 (a) had completed a self-evaluation of its pay practices in good faith; and
- 14 (b) can demonstrate that reasonable progress had been made toward eliminating compensation
- 15 differentials based on gender for comparable work in accordance with that evaluation.

16 (2) The self-evaluation may be of the employer's own design if the self-evaluation is reasonable in detail

17 and scope in relation to the size of the employer or conforms to a standard template or guidance issued by the

18 department of labor and industry. If a court determines that the self-evaluation was not reasonable in detail and

19 scope, the employer is neither entitled to an affirmative defense nor liable for liquidated damages as provided

20 in [section 7(1)].

21 (3) Evidence of a self-evaluation or remedial steps undertaken in accordance with subsections (1) and

22 (2) is not admissible in a proceeding as evidence of a violation of this section if the violation occurred prior to the

23 date the self-evaluation was completed or within 6 months after the self-evaluation was completed.

24 (4) Lack of a completed self-evaluation is not a reason to subject an employer to negative or adverse

25 inferences.

26 (5) The department of labor and industry has rulemaking authority to implement the guidance required

27 under this section.

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29 **NEW SECTION. Section 9. Notification.** Except for an employer of a person engaged in domestic

30 service in the employer's home, all employers subject to paying the minimum wage shall post a notice as to

1 compliance with the Montana Pay Equity Act and information as to filing a grievance in a format determined by  
2 the commissioner of labor and industry by rule.

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4 **NEW SECTION. Section 10. Rulemaking.** The commissioner of labor and industry shall adopt rules  
5 to implement notification requirements for [sections 4 through 10].

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7 **Section 11.** Section 49-2-512, MCA, is amended to read:

8 **"49-2-512. Filing in district court -- compliance with administrative procedures required.** (1) ~~The~~  
9 Except for a pay discrimination complaint and action brought under [sections 4 through 10], the provisions of this  
10 chapter establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter,  
11 including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section  
12 4, of the Montana constitution or 49-1-102. A claim or request for relief based upon the acts may not be  
13 entertained by a district court other than by the procedures specified in this chapter, except for pay discrimination  
14 actions brought under [sections 4 through 10].

15 (2) In addition to dismissal under 49-2-501(5) or 49-2-504(7)(b), the department shall dismiss a complaint  
16 if:

17 (a) the charging party fails to keep the department advised of changes of address and the department  
18 finds that the failure has impeded the administrative proceedings; or

19 (b) a period of 12 months has elapsed from the filing of a complaint and neither the department nor the  
20 commission has held a hearing pursuant to 49-2-505 or an informal hearing pursuant to 49-2-511. However, the  
21 department or the commission may refuse to dismiss a complaint under this subsection (2)(b) if:

22 (i) more than 30 days have elapsed since service of notice of hearing under 49-2-505;

23 (ii) the parties have stipulated to a reasonable extension of the timeframes; or

24 (iii) through litigation a party has unsuccessfully sought to prevent the department or the commission from  
25 conducting administrative proceedings on the complaint.

26 (3) Within 90 days after the department has issued a notice of dismissal pursuant to subsection (2), the  
27 charging party may commence a civil action for appropriate relief on the merits of the case in the district court  
28 in the district in which the alleged violation occurred. If the charging party fails to commence a civil action within  
29 90 days after the dismissal has been issued, the claim is barred. The court may provide the same relief as  
30 described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney

1 fees and costs."

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3 NEW SECTION. **Section 12. Codification instruction.** [Sections 4 through 10] are intended to be  
4 codified as an integral part of Title 39, chapter 3, and the provisions of Title 39, chapter 3, apply to [sections 4  
5 through 10].

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