

Amendment - 1st Reading-white - Requested by: Shane Morigeau - (S) Business, Labor, and Economic Affairs

- 2023

68th Legislature 2023

Drafter: Erin Sullivan, 406-444-3594

SB0146.001.001

1 SENATE BILL NO. 146
2 INTRODUCED BY S. MORIGEAU, D. BAUM, L. BISHOP, B. CARTER, J. COHENOUR, T. FRANCE, D.
3 HARVEY, D. HAWK, S. HOWELL, J. KARLEN, J. LYNCH, M. MARLER, M. ROMANO, T. RUNNING WOLF, F.
4 SMITH, E. STAFMAN, M. STROMSWOLD, M. THANE, M. WEATHERWAX, J. WINDY BOY, K. ZOLNIKOV, E.
5 BOLDMAN, W. CURDY, M. DUNWELL, J. ELLIS, P. FLOWERS, M. FOX, J. GROSS, D. HAYMAN, K.
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7
8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LABOR LAWS; CREATING THE WAGE
9 OPPORTUNITY AND TRANSPARENCY ACT; PROHIBITING WAGE DISCRIMINATION BY EMPLOYERS;
10 PROVIDING EXCEPTIONS; REQUIRING THE LISTING OF WAGE INFORMATION IN JOB POSTINGS;
11 EXEMPTING CERTAIN SMALL BUSINESSES; PROVIDING DEFINITIONS; AND PROVIDING RULEMAKING
12 AUTHORITY."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 NEW SECTION. Section 1. Short title. [Sections 1 through 89] may be cited as the "Wage
17 Opportunity and Transparency Act".

18
19 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 89], unless the context
20 clearly indicates otherwise, the following definitions apply:

- 21 (1) "Commissioner" has the same meaning as provided in 39-1-101.
22 (2) "Employee" means a person employed by an employer.
23 (3) "Employer" means the state or any political subdivision, commission, department, institution, or
24 school district, and every other person employing a person in the state.
25 (4) "Liquidated damages" means damages to compensate an employee for the delay in receiving
26 amounts due because of an employer's violation of [sections 1 through 89]. The term does not constitute a
27 penalty to the employer.

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1 (5) "Posting" means any solicitation intended to recruit job applicants for a specific available
2 position that includes qualifications for desired applicants, including recruitment done directly by an employer or
3 indirectly through a third party, and includes any postings done electronically or with a printed hard copy.

4 (6) "Sex" means an employee's gender identity.

5 (7) "Wage rate" means:

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

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

10
11 **NEW SECTION. Section 3. Wage discrimination prohibited.** (1) An employer may not discriminate
12 between employees on the basis of sex, or on the basis of sex in combination with another protected status as
13 described in 49-2-303(1)(a), by paying an employee of one sex a wage rate less than the wage rate paid to an
14 employee of a different sex for substantially similar work, regardless of job title, based on a composite of skill;
15 effort, which may include consideration of shift work; and responsibility, except if the employer demonstrates
16 each of the following:

17 (a) that the wage rate differential is based on:

18 (i) a seniority system;

19 (ii) a merit system;

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

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

22 (v) education, training, or experience to the extent that they are reasonably related to the work in
23 question; or

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

25 (b) that each factor relied on in subsection (1)(a) is applied reasonably;

26 (c) that the factors relied on in subsection (1)(a) account for the entire wage rate differential; and

27 (d) that prior wage rate history was not relied on to justify a disparity in current wage rates.

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- 1 (2) An employer may not:
- 2 (a) seek the wage rate or salary history of an applicant for employment from the applicant or a
- 3 current or former employer;
- 4 (b) require that an applicant's prior wage rate or salary history meet certain criteria, except as
- 5 provided in subsection (3);
- 6 (c) discriminate or retaliate against a prospective employee for failing to disclose the prospective
- 7 employee's wage rate history;
- 8 (d) discharge, or in any manner discriminate or retaliate against, an employee for invoking this
- 9 section on behalf of anyone or assisting in the enforcement of this subsection (2);
- 10 (e) discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with an
- 11 employee or other person because the employee or person inquired about, disclosed, compared, or otherwise
- 12 discussed the employee's wage rate;
- 13 (f) prohibit, as a condition of employment, an employee from disclosing the employee's wage rate;
- 14 or
- 15 (g) require an employee to sign a waiver or other document that:
- 16 (i) prohibits the employee from disclosing wage rate information; or
- 17 (ii) purports to deny the employee the right to disclose the employee's wage rate information.
- 18 (3) An employer may confirm an applicant's wage rate or salary history:
- 19 (a) if the applicant has voluntarily disclosed the applicant's wage rate or salary history; or
- 20 (b) after the employer has negotiated and made an offer of employment with compensation to the
- 21 applicant.

22

23 **NEW SECTION. Section 4. Enforcement -- complaints -- civil action -- rulemaking.** (1) The

24 commissioner is authorized to create and administer a process to accept and mediate complaints and to

25 provide legal resources concerning alleged violations of [section 3], and may adopt administrative rules as

26 necessary for this purpose. The process created and administered by the commissioner does not affect or

27 prevent the right of an aggrieved person from commencing a civil action pursuant to subsection (2).

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1 (2) A person aggrieved by a violation of [section 3] may commence a civil action in district court no
2 later than 2 years after the violation occurs. A violation of [section 3(1)] occurs on each occasion that a person
3 is affected by wage discrimination, including each occasion that a discriminatory wage rate is paid.

4 (3) A person aggrieved by a violation of [section 3] may obtain relief for back pay for the entire time
5 the violation continues, not to exceed 3 years.

6 (4) If a civil action is commenced under this section, any party to the civil action may demand a
7 trial by jury.

8 (5) Nothing in this section prevents an aggrieved person from filing a charge with the commission
9 for human rights under 2-15-1706.

10
11 NEW SECTION. Section 5. Employer liability -- awards -- suits. (1) (a) An employer who violates
12 [section 3(1)] is liable for economic damages in an amount equal to the difference between the amount that the
13 employer paid to the complaining employee and the amount that the employee would have received had there
14 been no violation plus liquidated damages in an amount equal to the employee's economic damages, except as
15 provided in subsection (1)(b).

16 (b) (i) If the employer demonstrates that the act or omission giving rise to the violation was in good
17 faith and that the employer has reasonable grounds for believing that the employer did not violate [section 3(1)],
18 the court may not award liquidated damages.

19 (ii) In determining whether the employer's violation was in good faith, the fact finder may consider
20 evidence that within 2 years prior to the date of the commencement of a civil action pursuant to [section 4], the
21 employer completed a thorough and comprehensive pay audit of its workforce, with the specific goal of
22 identifying and remedying unlawful pay disparities.

23 (2) An employer who violates any provision of [section 3] is liable for:

24 (a) legal and equitable relief, which may include employment, reinstatement, promotion, pay
25 increase, payment of lost wage rates, and liquidated damages; and

26 (b) the employee's reasonable costs, including attorney fees.

27 (3) Nothing in this section precludes an employee from asserting any other available statutory or

1 common-law claims.

2

3 **NEW SECTION. Section 6. Disclosure of wage or salary range by employer -- when required --**
4 **opportunities for promotion or advancement.** (1) An employer shall disclose in each posting for each job
5 opening the hourly or salary compensation, or a range of the hourly or salary compensation, and a general
6 description of all the benefits and other compensation to be offered to the hired applicant.

7 (2) An employer shall make reasonable efforts to announce, post, or otherwise make known all
8 opportunities for promotion to all current employees on the same calendar day and prior to making a promotion
9 decision.

10 (3) Upon request of an employee offered an internal transfer to a new position or promotion, the
11 employer shall provide the wage scale or salary range for the employee's new position.

12 ~~(4) Subsections (1) and (3) apply only to employers with 15 or more employees.~~

13
14 **NEW SECTION. Section 7. Recordkeeping.** An employer shall keep records of job descriptions and
15 wage rate history for each employee for the duration of the employment plus 2 years after the end of
16 employment to determine if there is a pattern of wage discrepancy.

17
18 **NEW SECTION. Section 8. Enforcement -- rulemaking.** (1) The commissioner has the power to
19 administer, carry out, and enforce all the provisions of [sections 1 through 89] and may adopt administrative
20 rules for that purpose. The commissioner shall provide written copies of adopted rules implementing this
21 section to all employees and employers upon written request.

22 (2) (a) A person who claims to be aggrieved by a violation of [section 6] or [section 7] may file a
23 written complaint with the commissioner within 1 year after the date that the person learned of the violation. The
24 written complaint must state the name and address of the employer and a detailed account of the alleged
25 violation.

26 (b) An employer's failure to comply with [section 6(1)] for one job opening is considered one
27 violation regardless of the number of postings that list the job opening.

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1 (c) An employer's failure to comply with [section 6(2)] for one promotional opportunity is
2 considered one violation.

3 (3) The commissioner shall investigate complaints of violations of subsection (2) and the
4 commissioner shall adopt administrative rules necessary to govern the investigations.

5 (4) Upon finding that an employer has violated [section 6] or [section 7], the commissioner may
6 order the employer to pay a fine of no less than \$500 and no more than ~~\$10,000~~ \$2,500 per violation.

7 (5) If an employee suing for a violation of [section 3] demonstrates a violation of [section 6] or
8 [section 7], and the court finds a violation of [section 6] or [section 7], the court may order appropriate relief,
9 including a rebuttable presumption that records not kept by the employer in violation of [section 7] contained
10 information favorable to the employee's claim and an instruction to the jury that failure to keep records can be
11 considered evidence that the violation was not made in good faith.

12

13 **NEW SECTION. Section 9. Exemptions for small businesses.** (1) The provisions of [sections 6
14 through 8] do not apply to a small business.

15 (2) For the purposes of this section, "small business" means:

16 (a) an employer with less than 50 full-time employees;

17 (b) a farm or ranch as defined in 39-3-402; or

18 (c) an employer who primarily employs short-term or contract workers, or part-time, seasonal, or
19 temporary employees.

20

21 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through ~~89~~] are intended to be
22 codified as a new part of Title 39, chapter 3, and the provisions of Title 39, chapter 3, apply to [sections 1
23 through ~~89~~].

24

- END -