

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

- 2023

68th Legislature 2023

Drafter: Erin Sullivan, 406-444-3594

SB0146.001.002

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.  
6 KELKER, R. LYNCH, E. MCCLAFFERTY, S. O'BRIEN, A. OLSEN, C. POPE, S. WEBBER

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 PROVIDING DEFINITIONS; AND PROVIDING RULEMAKING AUTHORITY."

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

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15 NEW SECTION. Section 1. Short title. [Sections 1 through 85] may be cited as the "Wage  
16 Opportunity ~~and Transparency~~ Act".

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18 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 85], unless the context  
19 clearly indicates otherwise, the following definitions apply:

- 20 (1) "Commissioner" has the same meaning as provided in 39-1-101.  
21 (2) "Employee" means a person employed by an employer.  
22 (3) "Employer" means the state or any political subdivision, commission, department, institution, or  
23 school district, and every other person employing a person in the state.  
24 (4) "Liquidated damages" means damages to compensate an employee for the delay in receiving  
25 amounts due because of an employer's violation of [sections 1 through 85]. The term does not constitute a  
26 penalty to the employer.

27 ~~(5) "Posting" means any solicitation intended to recruit job applicants for a specific available~~

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1 ~~position that includes qualifications for desired applicants, including recruitment done directly by an employer or~~  
2 ~~indirectly through a third party, and includes any postings done electronically or with a printed hard copy.~~

3 ~~(6)(5)~~ "Sex" means an employee's gender identity.

4 ~~(7)(6)~~ "Wage rate" means:

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

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

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

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

17 (i) a seniority system;

18 (ii) a merit system;

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

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

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

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

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

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

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

27 (2) An employer may not:

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

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

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

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

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

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

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

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

~~(c) — An employer's failure to comply with [section 6(2)] for one promotional opportunity is~~

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1 ~~considered one violation.~~

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

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

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

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12 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 85] are intended to be  
13 codified as a new part of Title 39, chapter 3, and the provisions of Title 39, chapter 3, apply to [sections 1  
14 through 85].

15 - END -