

No. 31. An act relating to equal pay.

(H.99)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds:

(1) Pay inequity has been illegal since President Kennedy signed the Equal Pay Act in 1963 and Vermont outlawed pay discrimination in the Fair Employment Act the same year. In 1965, President Johnson signed Executive Order 11246, which requires federal contractors to certify their compliance with federal nondiscrimination laws, including the Equal Pay Act.

(2) Notwithstanding these laws and notwithstanding the fact that women today make up nearly half of the workforce, pay inequity remains a persistent problem. Nationally, women earn roughly 78 percent of what their male counterparts earn. In Vermont, women fare only slightly better, earning roughly 84 cents per dollar earned by men, according to the National Partnership for Women and Families.

(3) Pay inequity affects all households. Nationally nearly 40 percent of mothers bring home the majority of their family's earnings, and nearly 63 percent of mothers bring home at least a quarter of their family's income.

(4) Research has shown that pay inequity may arise even if an employer does not specifically intend to discriminate against workers based on sex. For example, some employees may not have a fair opportunity to negotiate pay because they lack the opportunity to know what similarly situated employees earn. Other employees may avoid or be channeled into lower-paying

assignments or career paths that are viewed as more compatible with family needs. Other employees may temporarily drop out of the workforce because there is insufficient workplace flexibility; when such employees do return to the workforce, they may be unable to catch up to employees performing the same work.

(5) A number of European countries, such as Great Britain, France, and Germany, have successfully implemented laws that grant employees the right to ask for flexible workplace arrangements without fear of retaliation and that require employers to consider such requests in good faith. Employers with flexible, family-friendly policies tend to have lower rates of absenteeism, lower rates of employee turnover, and higher worker productivity.

(6) Research has also shown that short paid parental leaves tend to keep women in the labor force longer and that women who take such leaves tend not to earn less than their male counterparts.

Sec. 2. 21 V.S.A. § 495 is amended to read:

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition:

* * *

~~(5) For any employer, employment agency, or labor organization to discharge or in any other manner discriminate against any employee because such employee has lodged a complaint of discriminatory acts or practices or has cooperated with the attorney general or a state's attorney in an investigation of such practices, or is about to lodge a complaint or cooperate in an investigation, or because such employer believes that such employee may lodge a complaint or cooperate with the attorney general or state's attorney in an investigation of discriminatory acts or practices;~~

~~(6)~~ For any employer, employment agency, labor organization, or person seeking employees to discriminate against, indicate a preference or limitation, refuse properly to classify or refer, or to limit or segregate membership, on the basis of a person's having a positive test result from an HIV-related blood test;

~~(7)~~(6) For any employer, employment agency, labor organization, or person seeking employees to request or require an applicant, prospective employee, employee, prospective member, or member to have an HIV-related blood test as a condition of employment or membership, classification, placement, or referral;

~~(8)~~(7) For any employer, employment agency, labor organization, or person seeking employees to discriminate between employees on the basis of sex by paying wages to employees of one sex at a rate less than the rate paid to employees of the other sex for equal work that requires equal skill, effort, and

responsibility; and is performed under similar working conditions. An employer who is paying wages in violation of this section shall not reduce the wage rate of any other employee in order to comply with this subsection.

(A) An employer may pay different wage rates under this subsection when the differential wages are made pursuant to:

(i) A seniority system.

(ii) A merit system.

(iii) A system in which earnings are based on quantity or quality of production.

(iv) ~~Any factor other than sex~~ A bona fide factor other than sex.

An employer asserting that differential wages are paid pursuant to this subdivision shall demonstrate that the factor does not perpetuate a sex-based differential in compensation, is job-related with respect to the position in question, and is based upon a legitimate business consideration.

(B)(i) No employer may do any of the following:

~~(i)~~(I) Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages or from inquiring about or discussing the wages of other employees.

~~(ii)~~(II) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages or to inquire about or discuss the wages of other employees.

~~(iii) Discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages.~~

(ii) Unless otherwise required by law, an employer may prohibit a human resources manager from disclosing the wages of other employees.

(8) Retaliation prohibited. An employer, employment agency, or labor organization shall not discharge or in any other manner discriminate against any employee because the employee:

(A) has opposed any act or practice that is prohibited under this chapter;

(B) has lodged a complaint or has testified, assisted, or participated in any manner with the Attorney General, a state's attorney, the Department of Labor, or the Human Rights Commission in an investigation of prohibited acts or practices;

(C) is known by the employer to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of prohibited acts or practices;

(D) has disclosed his or her wages or has inquired about or discussed the wages of other employees; or

(E) is believed by the employer to have acted as described in subdivisions (A) through (D) of this subdivision.

* * *

(h) Nothing in this section shall require an employer to disclose the wages of an employee in response to an inquiry by another employee, unless the failure to do so would otherwise constitute unlawful employment discrimination. Unless otherwise required by law, nothing in this section shall require an employee to disclose his or her wages in response to an inquiry by another employee.

Sec. 3. 3 V.S.A. § 345 is added to read:

§ 345. EQUAL PAY IN GOVERNMENT CONTRACTS; CERTIFICATION

(a) Notwithstanding any other provision of law, an agency may not enter into a contract for goods with a contractor who does not provide written certification of compliance with the equal pay provisions of 21 V.S.A.

§ 495(a)(7).

(b) A contractor subject to this section shall maintain and make available its books and records at reasonable times and upon notice to the contracting agency and the Attorney General so that either may determine whether the contractor is in compliance with this section.

Sec. 4. 21 V.S.A. § 305 is amended to read:

§ 305. NURSING MOTHERS IN THE WORKPLACE

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(c) An employer shall not retaliate or discriminate against an employee who exercises ~~the right~~ or attempts to exercise the rights provided under this section. The provisions against retaliation in subdivision 495(a)(8) of this title

and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

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Sec. 5. 21 V.S.A. § 472b is amended to read:

§ 472b. TOWN MEETING LEAVE; EMPLOYEES; STUDENTS

(a) Subject to the essential operation of a business or entity of state or local government, which shall prevail in any instance of conflict, an employee shall have the right to take unpaid leave from employment under this section or subsection 472(b) of this title for the purpose of attending his or her annual town meeting, provided the employee notifies the employer at least seven days prior to the date of the town meeting. ~~An employer shall not discharge or in any other manner retaliate against an employee for exercising the right provided by this section.~~

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Sec. 6. 21 V.S.A. § 309 is added to read:

§ 309. FLEXIBLE WORKING ARRANGEMENTS

(a)(1) An employee may request a flexible working arrangement that meets the needs of the employer and employee. The employer shall consider a request using the procedures in subsections (b) and (c) of this section at least twice per calendar year.

(2) As used in this section, “flexible working arrangement” means intermediate or long-term changes in the employee’s regular working arrangements, including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing. “Flexible working arrangement” does not include vacation, routine scheduling of shifts, or another form of employee leave.

(b)(1) The employer shall discuss the request for a flexible working arrangement with the employee in good faith. The employer and employee may propose alternative arrangements during the discussion.

(2) The employer shall consider the employee’s request for a flexible working arrangement and whether the request could be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations.

(3) As used in this section, “inconsistent with business operations” includes:

(A) the burden on an employer of additional costs;

(B) a detrimental effect on aggregate employee morale unrelated to discrimination or other unlawful employment practices;

(C) a detrimental effect on the ability of an employer to meet consumer demand;

(D) an inability to reorganize work among existing staff;

(E) an inability to recruit additional staff;

(F) a detrimental impact on business quality or business performance;

(G) an insufficiency of work during the periods the employee proposes to work; and

(H) planned structural changes to the business.

(c) The employer shall notify the employee of the decision regarding the request. If the request was submitted in writing, the employer shall state any complete or partial denial of the request in writing.

(d) This section shall not diminish any rights under this chapter or pursuant to a collective bargaining agreement. An employer may institute a flexible working arrangement policy that is more generous than is provided by this section.

(e) The Attorney General, a state's attorney, or the Human Rights Commission in the case of state employees may enforce subsections (b) and (c) of this section by restraining prohibited acts, conducting civil investigations, and obtaining assurances of discontinuance in accordance with the procedures established in subsection 495b(a) of this title. An employer subject to a complaint shall have the rights and remedies specified in subsection 495b(a) of this title. An investigation against an employer shall not be a prerequisite for bringing an action. The Civil Division of the Superior Court may award injunctive relief and court costs in any action. There shall be no private right of action to enforce this section.

(f) An employer shall not retaliate against an employee exercising his or her rights under this section. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

(g) Nothing in this section shall affect any legal rights an employer or employee may have under applicable law to create, terminate, or modify a flexible working arrangement.

Sec. 7. 21 V.S.A. § 473 is amended to read:

§ 473. RETALIATION PROHIBITED

An employer shall not discharge or in any other manner retaliate against an employee ~~because:~~

~~(1) the employee lodged a complaint of a violation of a provision of this subchapter; or~~

~~(2) the employee has cooperated with the attorney general or a state's attorney in an investigation of a violation of a provision of this subchapter; or~~

~~(3) the employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of a provision of who exercises or attempts to exercise his or her rights under this subchapter. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.~~

Sec. 8. 21 V.S.A. § 474 is amended to read:

§ 474. PENALTIES AND ENFORCEMENT

(a) ~~The attorney general or a state's attorney may enforce the provisions of this subchapter by bringing a civil action for temporary or permanent injunctive relief, economic damages, including prospective lost wages for a period not to exceed one year, and court costs. The attorney general or a state's attorney may conduct an investigation to obtain voluntary conciliation of an alleged violation. Such investigation shall not be a prerequisite to the bringing of a court action.~~

(b) ~~As an alternative to subsection (a) of this section, an employee entitled to leave under this subchapter who is aggrieved by a violation of a provision of this subchapter may bring a civil action for temporary or permanent injunctive relief, economic damages, including prospective lost wages for a period not to exceed one year, attorney fees and court costs. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.~~

~~(e)~~(b) An employer may bring a civil action to recover compensation paid to the employee during leave, except payments made for accrued sick leave or vacation leave, and court costs to enforce the provisions of subsection 472(h) of this title.

Sec. 9. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

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(b) No person shall discharge or discriminate against an employee from employment because such employee asserted or attempted to assert a claim for benefits under this chapter or under the law of any state or under the United States.

* * *

(f) The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.

Sec. 10. 9 V.S.A. § 4502 is amended to read:

§ 4502. PUBLIC ACCOMMODATIONS

* * *

(c) No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits, or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability as follows:

* * *

~~(4) No public accommodation shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this section or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. No public accommodation shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of or on account of his or her having exercised or enjoyed or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by this section. [Repealed.]~~

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Sec. 11. 9 V.S.A. § 4503 is amended to read:

§ 4503. UNFAIR HOUSING PRACTICES

(a) It shall be unlawful for any person:

* * *

~~(5) To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or for having filed a charge, testified, or cooperated in any investigation or enforcement action pursuant to chapter 139 or 141 of this title. [Repealed.]~~

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Sec. 12. 9 V.S.A. § 4506 is amended to read:

§ 4506. ENFORCEMENT; CIVIL ACTION; RETALIATION PROHIBITED

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(e) Retaliation prohibited. A person shall not discriminate against any individual because that individual:

(1) has opposed any act or practice that is prohibited under section 4502 or 4503 of this title;

(2) has lodged a complaint or has testified, assisted, or participated in any manner with the Human Rights Commission in an investigation of acts or practices prohibited by chapter 139 of this title;

(3) is known by the person to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of acts or practices prohibited by chapter 139 of this title; or

(4) is believed by the person to have acted as described in subdivisions (1) through (3) of this subsection.

Sec. 13. PAID FAMILY LEAVE STUDY COMMITTEE

(a) Creation. There is created a Committee to study the issue of paid family leave in Vermont and to make recommendations regarding whether and how paid family leave may benefit Vermont citizens.

(b) Membership. The Committee shall consist of the following members:

(1) One member of the House of Representatives chosen by the Speaker;

(2) One member of the Senate chosen by the Committee on Committees;

(3) three representatives from the business community, one appointed by the Speaker and two by the Committee on Committees;

(4) two representatives from labor organizations, one appointed by the Speaker and one by the Committee on Committees;

(5) one representative appointed by the Governor;

(6) the Attorney General or designee;

(7) the Commissioner of Labor or designee;

(8) the Executive Director of the Vermont Commission on Women or designee; and

(9) the Executive Director of the Human Rights Commission or designee.

(c) Duties. The Committee shall examine:

(1) existing paid leave laws and proposed paid leave legislation in other states;

(2) which employees should be eligible for paid leave benefits;

(3) the appropriate level of wage replacement for eligible employees;

(4) the appropriate duration of paid leave benefits;

(5) mechanisms for funding paid leave through employee contributions;

(6) administration of paid leave benefits;

(7) transitioning to a funded paid leave program; and

(8) any other issues relevant to paid leave.

(d) The Committee shall make recommendations including proposed legislation to address paid family leave in Vermont.

(e) The Committee shall convene its first meeting on or before September 1, 2013. The Commissioner of Labor or designee shall be designated Chair of the Committee and shall convene the first and subsequent meetings. The Committee shall have the administrative assistance of the Department of Labor. The Committee shall meet not more than five times.

(f) The Committee shall report its findings and recommendations on or before January 15, 2014 to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs.

(g) For participation on the Committee at meetings during the adjournment of the General Assembly, legislative members shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(h) Other members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their participation shall be entitled to per diem compensation or reimbursement of expenses, or both, pursuant to 32 V.S.A. § 1010.

(i) The Committee shall cease to function upon transmitting its report.

Sec. 14. EFFECTIVE DATE

(a) Sec. 6 of this act shall take effect on January 1, 2014.

(b) The remaining sections of this act shall take effect on July 1, 2013.

Date the Governor signed the bill: May 14, 2013