

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

S.275

Introduced by Senators Clarkson, Balint, Branagan, and Ingram

Referred to Committee on

Date:

Subject: Labor; employment practices; fair employment practices; wage
discrimination; wage history inquiries

Statement of purpose of bill as introduced: This bill proposes to amend the
Fair Employment Practices Act to expand the wage discrimination provisions
to include all protected classes, to define certain terms related to wage
discrimination, and to prohibit employers from requesting an applicant's salary
history.

An act relating to equal pay

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

Sec. 1. 21 V.S.A. § 495 is amended to read:

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

(a) It shall be an 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:

1 (1) ~~For~~ for any employer, employment agency, or labor organization to
2 discriminate against any individual because of race, color, religion, ancestry,
3 national origin, sex, sexual orientation, gender identity, place of birth, or age or
4 against a qualified individual with a disability;

5 (2) ~~For~~ for any person seeking employees or for any employment
6 agency or labor organization to cause to be printed, published, or circulated
7 any notice or advertisement relating to employment or membership indicating
8 any preference, limitation, specification, or discrimination based upon race,
9 color, religion, ancestry, national origin, sex, sexual orientation, gender
10 identity, place of birth, age, or disability;

11 (3) ~~For~~ for any employment agency to fail or refuse to classify properly
12 or refer for employment or to otherwise discriminate against any individual
13 because of race, color, religion, ancestry, national origin, sex, sexual
14 orientation, gender identity, place of birth, or age or against a qualified
15 individual with a disability; or

16 (4) ~~For~~ for any labor organization, because of race, color, religion,
17 ancestry, national origin, sex, sexual orientation, gender identity, place of birth,
18 or age to discriminate against any individual or against a qualified individual
19 with a disability or to limit, segregate, or qualify its membership;

1 ~~(5)~~(b) It shall be an unlawful employment practice:

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

7 ~~(6)~~(2) ~~For~~ for any employer, employment agency, labor organization, or
8 person seeking employees to request or require an applicant, prospective
9 employee, employee, prospective member, or member to have an HIV-related
10 blood test as a condition of employment or membership, classification,
11 placement, or referral;.

12 ~~(7)~~(c)(1) ~~For~~ It shall be an unlawful employment practice for any
13 employer, employment agency, labor organization, or person seeking
14 employees to discriminate between employees on the basis of race, color,
15 religion, ancestry, national origin, sex, sexual orientation, gender identity,
16 place of birth, or age, or against a qualified individual with a disability, by
17 paying wages paying compensation to employees an employee of one race,
18 color, religion, ancestry, national origin, sex, sexual orientation, gender
19 identity, place of birth, or age, or to an employee who is a qualified individual
20 with a disability, at a rate less than the rate paid to employees of the other sex
21 an employee of a different race, color, religion, ancestry, national origin, sex,

1 sexual orientation, gender identity, place of birth, or age, or who does not have
2 that disability, for equal work that requires equal skill, effort, and
3 responsibility and is performed under similar working conditions. An
4 employer who is ~~paying wages~~ paying compensation in violation of this
5 section shall not reduce the ~~wage rate~~ compensation of any other employee in
6 order to comply with this subsection.

7 (A) An employer may ~~pay different wage rates~~ pay different
8 compensation under this ~~subsection~~ subdivision (1) when the ~~differential~~
9 ~~wages are made~~ entire difference in the compensation is pursuant to:

10 (i) ~~A seniority system.~~

11 (ii) ~~A merit system.~~

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

14 (iv) ~~A bona fide factor other than sex~~ any one or a combination of
15 the following factors:

16 (i) a seniority system;

17 (ii) a merit system;

18 (iii) a system in which compensation is based on the quantity or
19 quality of production;

20 (iv) workplace locations;

1 (v) travel, provided that travel is a necessary and regular part of
2 the employee's job;

3 (vi) education;

4 (vii) training; or

5 (viii) experience.

6 (B) An employer asserting that differential ~~wages are paid~~
7 compensation is paid pursuant to this ~~subdivision~~ subsection (c) shall
8 demonstrate that the factor does not perpetuate a ~~sex-based~~ differential in
9 compensation based on race, color, religion, ancestry, national origin, sex,
10 sexual orientation, gender identity, place of birth, or age, or whether an
11 employee is a qualified individual with a disability, is job-related with respect
12 to the position in question, and is based upon a legitimate business
13 consideration.

14 ~~(B)(i)(2)(A) No employer may~~ An employer shall not do any of the
15 following:

16 ~~(H)(i) Require~~ require, as a condition of employment, that an
17 employee refrain from disclosing the amount of his or her ~~wages~~ compensation
18 or from inquiring about or discussing the ~~wages~~ compensation of other
19 employees; or

20 ~~(H)(ii) Require~~ require an employee to sign a waiver or other
21 document that purports to deny the employee the right to disclose the amount

1 of his or her ~~wages~~ compensation or to inquire about or discuss the ~~wages~~
2 compensation of other employees.

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

6 (3) It shall be an unlawful employment practice for an employer,
7 employment agency, labor organization, or person seeking employees to do
8 any of the following:

9 (A)(i) Inquire about a prospective employee's current or past
10 compensation or seek information regarding a prospective employee's current
11 or past compensation from the prospective employee's current or former
12 employer.

13 (ii) Notwithstanding subdivision (i) of this subdivision (A), if a
14 prospective employee voluntarily discloses information about his or her current
15 or past compensation, the employer, employment agency, labor organization,
16 or person seeking employees may seek to confirm or request that the
17 prospective employee confirm that information.

18 (B) Determine the compensation for a position based on the current
19 or past compensation of a prospective employee. Nothing in this subdivision

20 (3) shall prohibit an employer from considering the compensation of a current

1 employee of the employer during the transfer, promotion, or hiring of that
2 employee for a new position with the employer.

3 (4) As used in this subsection, “compensation” includes wages, salary,
4 bonuses, benefits, fringe benefits, and equity-based compensation.

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

8 ~~(A)(1)~~ has opposed any act or practice that is prohibited under this
9 chapter;

10 ~~(B)(2)~~ has lodged a complaint or has testified, assisted, or
11 participated in any manner with the Attorney General, a State’s Attorney, the
12 Department of Labor, or the Human Rights Commission in an investigation of
13 prohibited acts or practices;

14 ~~(C)(3)~~ is known by the employer to be about to lodge a complaint,
15 testify, assist, or participate in any manner in an investigation of prohibited
16 acts or practices;

17 ~~(D)(4)~~ has disclosed his or her ~~wages~~ compensation or has inquired
18 about or discussed the ~~wages~~ compensation of other employees; or

19 ~~(E)(5)~~ is believed by the employer to have acted as described in
20 subdivisions ~~(A)(1)~~ through ~~(D)(4)~~ of this ~~subdivision~~ subsection.

1 ~~(b)~~(e) The provisions of this section shall not be construed to limit the
2 rights of employers to discharge employees for good cause shown.

3 ~~(e)~~(f) The provisions of this section prohibiting discrimination on the basis
4 of age shall apply for the benefit of persons 18 years of age or older.

5 ~~(d)~~(g)(1) An employee shall not have a cause of action in negligence for
6 any injury occurring to the employee on ~~the~~ account of an employer complying
7 with subdivisions ~~(a)~~~~(6)~~(b)(1) and ~~(7)~~(2) of this section.

8 (2) A person shall not have a cause of action in negligence for any
9 injury occurring to the person on ~~the~~ account of an employer complying with
10 subdivisions ~~(a)~~~~(6)~~(b)(1) and ~~(7)~~(2) of this section.

11 ~~(e)~~(h) The provisions of this section prohibiting discrimination on the basis
12 of sexual orientation and gender identity shall not be construed to prohibit or
13 prevent any religious or denominational institution or organization, or any
14 organization operated for charitable or educational purposes, which is
15 operated, supervised, or controlled by or in connection with a religious
16 organization, from giving preference to persons of the same religion or
17 denomination or from taking any action with respect to matters of employment
18 ~~which~~ that is calculated by the organization to promote the religious principles
19 for which it is established or maintained.

20 ~~(f)~~ [Repealed.]

1 Sec. 3. REPLACEMENTS

2 In sections 305, 309, 473, 495k, and 710 of this title, the phrase
3 “subdivision 495(a)(8)” wherever it appears, shall be replaced with “subsection
4 495(d).”

5 Sec. 4. EFFECTIVE DATE

6 This act shall take effect on July 1, 2018.