

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

DRAFT JAW/JAW
HOUSE BILL

5 By: Representative McCullough
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE ARKANSAS EQUAL PAY ACT OF 2019;
9 TO REQUIRE STATE AGENCIES TO PAY EQUAL WAGES TO MEN
10 AND WOMEN; TO ENCOURAGE ALL EMPLOYERS TO ELIMINATE
11 WAGE DIFFERENTIALS; TO REWARD BUSINESSES WHO LEAD
12 ARKANSAS IN THE POSITIVE DIRECTION OF EQUALITY IN
13 PAY; TO EDUCATE THE PUBLIC ON WAGE DIFFERENTIALS; TO
14 PROVIDE GIRLS AND WOMEN WITH SPECIALIZED TRAINING ON
15 WAGE NEGOTIATION IN THE WORKPLACE; AND FOR OTHER
16 PURPOSES.

Subtitle

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19 TO CREATE THE ARKANSAS EQUAL PAY ACT OF
20 2019.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. DO NOT CODIFY. Title.

27 This act shall be known as the "Arkansas Equal Pay Act of 2019".
28

29 SECTION 2. DO NOT CODIFY. Legislative intent.

30 The General Assembly finds that:

31 (1) Women have entered the workforce in record numbers over the
32 past fifty (50) years;

33 (2) Despite the enactment of the Equal Pay Act of 1963, many
34 women continue to earn significantly lower pay than men for equal work.

35 These pay disparities exist in both the private and governmental sectors. In
36 many instances, the pay disparities can only be due to continued intentional

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1 discrimination or the lingering effects of past discrimination;

2 (3) The existence of such pay disparities:

3 (A) Depresses the wages of working families who rely on the
 4 wages of all members of the family to make ends meet;

5 (B) Undermines women’s retirement security, which is often
 6 based on earnings while in the workforce;

7 (C) Prevents the optimum utilization of available labor
 8 resources;

9 (D) Has been spread and perpetuated through commerce and
 10 the channels and instrumentalities of commerce, among the workers of
 11 Arkansas;

12 (E) Burdens commerce and the free flow of goods in
 13 commerce;

14 (F) Constitutes an unfair method of competition in
 15 commerce;

16 (G) Leads to labor disputes burdening and obstructing
 17 commerce and the free flow of goods in commerce;

18 (H) Interferes with the orderly and fair marketing of
 19 goods in commerce; and

20 (I) In many instances, may deprive workers of equal
 21 protection on the basis of sex in violation of the:

22 (i) Fifth and Fourteenth Amendments to the United
 23 States Constitution; and

24 (ii) Article 2, §§ 2, 3, and 18 of the Arkansas
 25 Constitution;

26 (4)(A) Artificial barriers to the elimination of discrimination
 27 in the payment of wages on the basis of sex continue to exist decades after
 28 the enactment of the Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq.,
 29 the Civil Rights Act of 1964, 42 U.S.C. et seq., and Arkansas Code § 11-4-
 30 601 et seq.;

31 (B) These barriers have resulted, in significant part,
 32 because the Equal Pay Act of 1963 has not worked as Congress originally
 33 intended. Additional laws are necessary to ensure that the Act provides
 34 effective protection to those subject to pay discrimination on the basis of
 35 their sex; and

36 (C) Elimination of those barriers will have positive

1 effects, including without limitation:

2 (i) Providing a solution to problems in the economy
 3 created by unfair pay disparities;

4 (ii) Substantially reducing the number of working
 5 women earning unfairly low wages, thereby reducing the dependence on public
 6 assistance;

7 (iii) Promoting stable families by enabling all
 8 family members to earn a fair rate of pay;

9 (iv) Remedying the effects of past discrimination on
 10 the basis of sex and ensuring that in the future workers are afforded equal
 11 protection on the basis of sex; and

12 (v) Ensuring equal protection under the law;

13 (5) The Arkansas Department of Labor, the Office of Personnel
 14 Management of the Department of Finance and Administration, and other state
 15 agency employers have important and unique responsibilities to help ensure
 16 that women receive equal pay for equal work;

17 (6) With a stronger commitment by state agency employers to
 18 their responsibilities, increased information as a result of the protections
 19 created by this act, wage data, and more effective remedies, women will be
 20 better able to recognize and enforce their rights;

21 (7) Certain employers have already made great strides in
 22 eradicating unfair pay disparities in the workplace and their achievements
 23 should be recognized; and

24 (8) By enactment of this act, the State of Arkansas commits to
 25 lead our fellow states by ensuring that pay disparity based on gender is
 26 eradicated in the State of Arkansas and, in turn, the United States of
 27 America.

28
 29 SECTION 3. Arkansas Code Title 11, Chapter 4, Subchapter 6, is amended
 30 to add additional sections to read as follows:

31 11-4-613. Negotiation skills training for girls and women.

32 (a) The Arkansas Department of Labor, with the assistance of the
 33 Arkansas Department of Career Education, may establish and carry out a
 34 competitive grant program designed to provide negotiation skills programs and
 35 training for girls and women.

36 (b) The Arkansas Department of Labor may provide the grants under this

1 section to state agencies, municipalities, counties, school districts,
2 private nonprofit organizations, and other community-based organizations upon
3 application.

4 (c) An entity that receives a grant under this subsection shall use
5 the funds to carry out an effective negotiation skills training program that:

6 (1) Empowers girls and women; and

7 (2) Helps girls and women strengthen their negotiation skills to
8 allow the girls and women to obtain higher salaries and rates of compensation
9 that are equal to those paid to similarly situated male employees.

10 (d) The Arkansas Department of Labor shall enact rules in furtherance
11 of this section which, at a minimum:

12 (1) Provide for the application form and process;

13 (2) Adopt the factors to be considered in awarding the grants;

14 and

15 (3) Set minimum standards for the programs and trainings to be
16 instituted under this section.

17 (e) No later than September 1, 2020, and annually thereafter, the
18 Arkansas Department of Labor shall prepare and submit to the Arkansas
19 Legislative Council a report describing the activities conducted under this
20 section and evaluating the effectiveness of the activities in achieving the
21 purposes of this subchapter.

22
23 11-4-614. Research, education, and outreach.

24 (a) The Arkansas Department of Labor may conduct and is encouraged to
25 conduct studies and provide information to employers, labor organizations,
26 professional associations, educational institutions, and the general public
27 concerning the means available to eliminate pay disparities between men and
28 women including without limitation:

29 (1) Conducting and promoting research to develop the means to
30 expeditiously correct the conditions leading to pay disparities;

31 (2) Publishing the findings resulting from studies and other
32 materials relating to eliminating the pay disparities;

33 (3) Sponsoring and assisting state and community informational
34 and educational programs;

35 (4) Providing information on the means of eliminating pay
36 disparities;

1 (5) Recognizing and promoting the achievements of employers,
 2 labor organizations, and professional associations that have worked to
 3 eliminate pay disparities; and

4 (6) Convening a statewide summit to discuss and consider
 5 approaches for rectifying the pay disparities.

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 7 11-4-615. Establishment of the "Arkansas Award for Pay Equity in the
 8 Workplace".

9 (a) There is established the Arkansas Department of Labor's "Arkansas
 10 Award for Pay Equity in the Workplace" which shall be awarded, as
 11 appropriate, to encourage proactive efforts to comply with this subchapter.

12 (b) The Arkansas Department of Labor shall by rule:

13 (1) Set criteria for receipt of the award, including without
 14 limitation that an employer has made substantial effort to eliminate pay
 15 disparities between men and women and who deserves special recognition for
 16 that effort;

17 (2) Establish procedures for the application for, third party
 18 nomination for, and presentation of the award.

19 (c) As used in this section "employer" includes, without limitation:

20 (1) A corporation, whether nonprofit or for profit;

21 (2) A partnership;

22 (3) A professional association;

23 (4) A labor organization;

24 (5) Any other business entity that has regular employees; and

25 (6) An entity carrying out an education referral program,
 26 training program, apprenticeship, or management training program.

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 28 SECTION 4. Arkansas Code Title 21, Chapter 5, Subchapter 2, is amended
 29 to add an additional section to read as follows:

30 21-5-226. Equal Pay in the Uniform Classification and Compensation
 31 Act.

32 A state agency as defined under § 21-5-1500 shall not discriminate
 33 between employees of the state agency as defined under § 21-5-1500 on the
 34 basis of sex by paying wages to employees at a rate or in an amount less than
 35 the rate at which any state agency § 21-5-1500 pays wages to employees of the
 36 opposite sex for equal work on jobs in violation of Chapter 21, Subchapter

1 15.

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4 SECTION 5. Arkansas Code Title 21, Chapter 5, is amended to add an
5 additional subchapter to read as follows:

6 Subchapter 15 – Equal Pay in Government

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8 21-5-1500. Definitions.

9 As used in this subchapter:

10 (1) "Bona fide factor" means a reason or justification for a
11 wage differential that is:

12 (A) Not based upon a person's sex or derived from a sex-
13 based consideration;

14 (B) Job related;

15 (C) Consistent with business necessity; and

16 (D) Accounts for the entire wage differential in
17 compensation at issue;

18 (2) "State agency" means all agencies, authorities, departments,
19 boards, commissions, bureaus, councils, or other agencies of the state that
20 are supported by an appropriation of state or federal funds; and

21 (3) "Wage differential" means the difference in wages between
22 employees of different sexes who have similar skills.

23
24 21-5-1501. Wage differential based on sex – Prohibited.

25 (a) A state agency shall not discriminate between employees of the
26 state agency on the basis of sex by paying wages to employees at a rate or in
27 an amount less than the rate at which the state agency pays wages to
28 employees of the opposite sex for equal work on jobs, the performance of
29 which require equal skill, effort, and responsibility, and which are
30 performed under similar working conditions, except where such payment is made
31 pursuant to a:

32 (1) Seniority system;

33 (2) Merit system; or

34 (3) Bona fide factor.

35 (b) A state agency that is paying a wage differential in violation of
36 this section shall not, in order to comply with this section, reduce the wage

1 rate of any employee.

2 (c) A state agency shall not take adverse action against an employee
3 because the employee:

4 (1) Filed, communicated, or discussed with any party a
5 complaint, either written or verbal, of a violation of this subchapter;

6 (2) Discussed or disclosed his or her wage or salary to any
7 other person;

8 (3) Filed an action in court or a claim with the Arkansas State
9 Claims Commission alleging a violation of this subchapter; or

10 (4) Testified or assisted in an investigation or hearing
11 concerning an alleged violation under this subchapter.

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13 21-5-1502. Penalties.

14 (a) An employee of a state agency may bring an action against a state
15 agency for a violation of this subchapter in:

16 (1) The Pulaski County Circuit Court; or

17 (2) A circuit court in the jurisdiction within which the alleged
18 violation of this subchapter takes place.

19 (b) If the state agency proves by a preponderance of the evidence that
20 it had a bona fide reason for the alleged violation of this subchapter, the
21 burden is on the employee to demonstrate by a preponderance of the evidence
22 that:

23 (1) An alternative employment practice exists that would serve
24 the same business purpose without producing the wage differential; and

25 (2) The employer has not adopted the alternative practice.

26 (c) If the employee prevails in an action under this section, the
27 employee shall be awarded:

28 (1) Compensatory damages;

29 (2) Reasonable attorneys' fees; and

30 (3) Any other just and proper relief.

31 (d) Nothing in this section shall be construed to limit the rights of
32 an employee provided under any provision of state or federal law.

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34 21-5-1503. Training.

35 The Office of Personnel Management of the Department of Finance and
36 Administration with the assistance of the Arkansas Department of Labor shall,

1 subject to the availability of funds, develop and provide a training manual
2 and classes to state agency employers and employees concerning matters
3 involving discrimination in the payment of wages .

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