

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

HOUSE BILL 1021

5 By: Representative Love  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND WAGE DISCRIMINATION LAWS; TO PROVIDE  
9 PAY EQUITY FOR WOMEN; TO PROVIDE REMEDIES FOR  
10 VIOLATIONS OF WAGE DISCRIMINATION LAWS; TO PROHIBIT  
11 DISCHARGE OR DISCRIMINATION OR RETALIATION ACTIONS  
12 AGAINST AN EMPLOYEE FOR ENGAGING IN CONDUCT PERMITTED  
13 UNDER THE WAGE DISCRIMINATION LAWS; TO PROVIDE  
14 REMEDIES FOR AN EMPLOYEE WHO IS DISCHARGED OR  
15 DISCRIMINATED OR RETALIATED AGAINST FOR ENGAGING IN  
16 CONDUCT PERMITTED UNDER THE WAGE DISCRIMINATION LAWS;  
17 AND FOR OTHER PURPOSES.  
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## Subtitle

20  
21 TO PROVIDE PAY EQUITY FOR WOMEN; AND TO  
22 AMEND THE WAGE DISCRIMINATION LAWS  
23 CONCERNING PROHIBITED CONDUCT AND  
24 REMEDIES FOR VIOLATIONS OF THE WAGE  
25 DISCRIMINATION LAWS.  
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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30 SECTION 1. Arkansas Code § 11-4-601 is amended to read as follows:

31 11-4-601. Discrimination on the basis of ~~sex~~ gender prohibited.

32 (a) Every employer in the state shall pay employees equal compensation  
33 for equal services, and no employer shall discriminate against any employee  
34 in the matter of wages or compensation solely on the basis of the ~~sex~~ gender  
35 of the employee.

36 (b) An employer who violates or fails to comply with ~~the provisions of~~



1 this section ~~shall be~~ upon conviction is guilty of a Class C misdemeanor, and  
 2 each day that the violation or failure to comply continues ~~shall be~~ is a  
 3 separate offense.

4  
 5 SECTION 2. Arkansas Code § 11-4-607 – 11-4-612 are amended to read as  
 6 follows:

7 11-4-607. Definitions for §§ 11-4-608 – ~~11-4-612~~ 11-4-613.

8 As used in §§ 11-4-608 – ~~11-4-612~~ 11-4-613, unless the context  
 9 otherwise requires:

10 (1)(A) ~~“Employees” shall mean any person employed for hire in~~  
 11 ~~any lawful business, industry, trade, profession, or enterprise.~~

12 (B) ~~However, it shall not include persons engaged in~~  
 13 ~~domestic service in the home of the employer; in agricultural service, or in~~  
 14 ~~temporary or seasonal employment; employees of any social club, fraternal,~~  
 15 ~~charitable, educational, religious, scientific, or literary association, no~~  
 16 ~~part of the net earnings of which inures to the benefit of any private~~  
 17 ~~individual~~ “Employee” means an individual who provides services or labor for  
 18 a salary, wages, or other remuneration for an employer; and

19 (2) ~~“Employer” shall include any person, natural or artificial,~~  
 20 ~~acting in the interest of an employer directly or indirectly; and~~

21 (3) ~~“Employment” means any employment under contract of hire,~~  
 22 ~~expressed or implied, written or oral~~ means a person or entity engaged in  
 23 business, an industry, a profession, a trade, or other enterprise in the  
 24 state or a unit of state or local government, including without limitation an  
 25 agent, representative, or designee of the employer.

26  
 27 11-4-608. Penalties for violation of §§ 11-4-607 – ~~11-4-612~~ 11-4-613.

28 ~~Any~~ An employer who violates ~~any~~ a provision of §§ 11-4-607 – ~~11-4-612,~~  
 29 ~~11-4-613~~ or who discharges or in any other manner discriminates against ~~any~~  
 30 an employee because the employee has made a complaint to ~~his or her employer,~~  
 31 ~~the Director of the Department of Labor, or any other person, has instituted~~  
 32 or caused to be instituted ~~any proceedings~~ a proceeding under or related to  
 33 §§ 11-4-607 – ~~11-4-612~~ 11-4-613, or has testified or is about to testify in  
 34 ~~any such~~ a proceeding under or related to §§ 11-4-607 – 11-4-613 upon  
 35 conviction is guilty of an unclassified misdemeanor and shall be fined not  
 36 more than five hundred dollars (\$500) nor imprisoned more than one (1) year,

1 or both.

2  
3 11-4-609. Administration of §§ 11-4-607 - ~~11-4-612~~ 11-4-613.

4 The Director of the Department of Labor shall ~~have the power and it~~  
5 ~~shall be his or her duty to~~ carry out and administer the provisions of §§ 11-  
6 4-607 - ~~11-4-612~~ 11-4-613.

7  
8 11-4-610. ~~Wage~~ Gender-based wage discrimination ~~between sexes~~  
9 prohibited.

10 (a) ~~No~~ An employer shall not:

11 (1) discriminate Discriminate in the payment of wages ~~as between~~  
12 ~~the sexes~~ on the basis of gender; or ~~shall pay any~~

13 (2) Pay a female in his or her employ a salary or wage rates  
14 less than the salary or wage rates paid to a male ~~employees~~ employee for  
15 ~~comparable~~ substantially similar work, when viewed as a composite of skill,  
16 effort, and responsibility and performed under similar working conditions.

17 (b) ~~Nothing in §§ Sections~~ 11-4-607 - ~~11-4-612~~ shall 11-4-613 do not  
18 prohibit a variation in rates of pay ~~based upon a difference in seniority,~~  
19 ~~experience, training, skill, ability, differences in duties and services~~  
20 ~~performed, differences in the shift or time of the day worked, or any other~~  
21 ~~reasonable differentiation except difference in sex~~ when the employer  
22 demonstrates the following:

23 (1) The compensation differential is based on one (1) or more of  
24 the following factors:

25 (A) A seniority system;

26 (B) A merit system;

27 (C) A system that measures earning by quantity or quality  
28 of production; or

29 (D)(i) A bona fide factor other than gender, including  
30 without limitation education, training, experience, skill, ability,  
31 differences in duties and services performed, and differences in the shift or  
32 time of the day worked.

33 (ii) The factors stated in subdivision (b)(1)(D)(i)  
34 of this section:

35 (a) Apply only if the employer demonstrates  
36 that the factor is not based on or derived from a gender-based differential

1 in compensation, is job related with respect to the position in question, and  
 2 is consistent with an overriding legitimate business purpose such that the  
 3 factor relied on effectively fulfills the business purpose the factor is  
 4 intended to serve; and

5 (b) Do not apply if the employee demonstrates  
 6 that an alternative business practice exists that would serve the same  
 7 business purpose without producing the differential in compensation;

8 (2) Each factor being relied on is applied reasonably; and

9 (3)(A) The factors relied on account for the entire differential  
 10 in compensation.

11 (B) However, prior salary in any position, by itself, does  
 12 not justify a differential in compensation.

13  
 14 11-4-611. ~~Action~~ Actions to collect unpaid salary or wages.

15 (a)(1) An employer who violates the provisions of § 11-4-610 ~~shall be~~  
 16 is liable to the employee or employees affected in the amount of ~~their unpaid~~  
 17 the salary or wages, and interest on the wages, that each employee is  
 18 deprived of by reason of the violation.

19 (2) However, if an employee recovers any moneys under federal  
 20 law for the same violation, the employee shall return to the employer the  
 21 lesser of the amount recovered under this section or the amount recovered  
 22 under federal law.

23 (b)(1) ~~Action to recover the wages~~ An action under this section may be  
 24 maintained in any court of competent jurisdiction by any one (1) or more  
 25 employees.

26 (2) ~~Any~~ An agreement between the employer and the employee for  
 27 that employee to work for less than the salary or wage to which the employee  
 28 is entitled under §§ 11-4-607 - ~~11-4-612 shall be~~ 11-4-613 is no defense to  
 29 the action.

30 (3) In addition to any salary or wages and interest recovered,  
 31 the court in the action shall allow an additional equal amount as liquidated  
 32 damages plus a reasonable attorney's fee and court costs.

33 (4)(A) At the request of ~~any~~ an employee paid less than the  
 34 salary or wage to which he or she is entitled under §§ 11-4-607 - ~~11-4-612~~  
 35 11-4-613, the Director of the Department of Labor ~~may~~ ;

36 (i) May take an assignment of the salary or wage

1 claim in trust for the employee; and ~~shall~~

2 (ii) Shall bring any legal action necessary to  
3 collect the claim.

4 (B) The director shall not be required to pay any court  
5 costs in connection with the action.

6 (c)(1) An employee may file a complaint with the Department of Labor  
7 alleging that an employer has violated § 11-4-610.

8 (2) The department shall:

9 (A) Investigate each complaint filed under this  
10 subdivision (c)(1) of this section;

11 (B)(i) Keep confidential the name of an employee who  
12 submits a complaint under subdivision (c)(1) of this section until the  
13 department establishes the validity of the complaint.

14 (ii) However, the department may disclose the name  
15 of an employee who submits a complaint under subdivision (c)(1) of this  
16 section if disclosure is required to investigate the complaint; and

17 (C) Take all proceedings necessary to enforce the payment  
18 of any moneys found to be due and unpaid to an employee who files a complaint  
19 under subdivision (c)(1) of this section.

20 (3)(A) If the department finds that an employer has violated §  
21 11-4-610, the department may supervise the payment of salary or wages and  
22 interest found to be due and unpaid to employees under § 11-4-610 and this  
23 section.

24 (B) Acceptance of payment in full made by an employer and  
25 approved by the department is a waiver of the employee's cause of action  
26 under this section.

27 (d)(1)(A) Unless the affected employee or group of employees request  
28 otherwise, the department may commence and prosecute a civil action on behalf  
29 of the employee and a similarly affected group of employees to recover unpaid  
30 salary or wages, interest, and liquidated damages for a violation under § 11-  
31 4-610.

32 (B) If the department pursues a civil action under  
33 subdivision (d)(1)(A) of this section, the department shall recover the costs  
34 of the civil action if the civil action is successful.

35 (2)(A) The consent of an employee to the bringing of a civil  
36 action is a waiver by the employee of the employee's cause of action under

1 this section unless the civil action is dismissed without prejudice by the  
 2 department.

3 (B) However, an employee may intervene in a civil action  
 4 or may initiate an independent civil action if the civil action under this  
 5 subsection has not been determined within one hundred eighty (180) days from  
 6 the date of the filing of the complaint.

7 ~~(e) Any~~ (e) An action to recover salary or wages, interest, and  
 8 liquidated damages based on violation of § 11-4-610 ~~must~~ shall be commenced  
 9 within ~~two~~:

10 (1) Two (2) years of the accrual thereof and not afterwards  
 11 after the cause of action accrues; or

12 (2) If the cause of action arises out of willful violation of §  
 13 11-4-610, three (3) years after the cause of action accrues.

14  
 15 11-4-612. Employer to keep records.

16 (a) ~~Every~~ An employer subject to §§ 11-4-607 – ~~11-4-612~~ 11-4-613 shall  
 17 keep and maintain records of the salaries and wage rates, job  
 18 classifications, and other terms and conditions of employment of ~~the persons~~  
 19 ~~employed by him or her~~ each employee of the employer, and the records shall  
 20 be preserved for a period of ~~three (3)~~ at least five (5) years.

21 (b) The records kept under this section shall ~~also~~ be made available  
 22 to the parties and to the court ~~wherein~~ in which an action ~~to recover unpaid~~  
 23 ~~wages~~ under this subchapter is pending.

24  
 25 SECTION 3. Arkansas Code Title 11, Chapter 4, Subchapter 6, is amended  
 26 to add an additional section to read as follows:

27 11-4-613. Action for discrimination or retaliation.

28 (a) An employer shall not:

29 (1) Discharge an employee or discriminate or retaliate against  
 30 an employee for an action taken by an employee under § 11-4-611; or

31 (2) Prohibit an employee from:

32 (A) Disclosing the employee's own salary or wages;

33 (B) Discussing the salary or wages of others;

34 (C) Inquiring about another employee's salary or wages; or

35 (D) Aiding or encouraging another employee to exercise his  
 36 or her rights under § 11-4-611.

1       (b) This section does not create an obligation to disclose salaries or  
2 wages.

3       (c) An employee who has been discharged, discriminated against, or  
4 retaliated against in the terms or conditions of his or her employment  
5 because the employee engaged in conduct permitted under § 11-4-611 may  
6 recover in a civil action:

7               (1) Reinstatement;

8               (2) Reimbursement for lost salary or wages and work benefits  
9 caused by the acts of the employer, including interest on the lost salary or  
10 wages and work benefits; and

11               (3) Any appropriate equitable relief.

12       (d) A civil action brought under this section shall be commenced  
13 within one (1) year after the cause of action accrues.

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