

1 State of Arkansas
2 91st General Assembly
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4

As Engrossed: H3/10/17

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.
18
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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:
29

30 SECTION 1. Arkansas Code § 11-4-607 – 11-4-612 are amended to read as
31 follows:

32 11-4-607. Definitions for §§ 11-4-608 – ~~11-4-612~~ 11-4-614.

33 As used in §§ 11-4-608 – ~~11-4-612~~ 11-4-614, unless the context
34 otherwise requires:

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



1 ~~(B) However, it shall not include persons engaged in~~
 2 ~~domestic service in the home of the employer; in agricultural service, or in~~
 3 ~~temporary or seasonal employment; employees of any social club, fraternal,~~
 4 ~~charitable, educational, religious, scientific, or literary association, no~~
 5 ~~part of the net earnings of which inures to the benefit of any private~~
 6 ~~individual "Employee" does not include:~~

7 ~~(A) Any individual employed by his or her parents, spouse,~~
 8 ~~or child;~~

9 ~~(B) An individual participating in a specialized~~
 10 ~~employment training program conducted by a nonprofit sheltered workshop or~~
 11 ~~rehabilitation facility; or~~

12 ~~(C) An individual employed outside the State of Arkansas;~~
 13 ~~and~~

14 ~~(2) "Employer" shall include any person, natural or artificial,~~
 15 ~~acting in the interest of an employer directly or indirectly; and~~

16 ~~(3) "Employment" means any employment under contract of hire,~~
 17 ~~expressed or implied, written or oral means a person who employs nine (9) or~~
 18 ~~more employees in the State of Arkansas in each of twenty (20) or more~~
 19 ~~calendar weeks in the current or preceding calendar year, or any agent of~~
 20 ~~such person.~~

21
 22 11-4-608. Penalties for violation of §§ 11-4-607 – ~~11-4-612~~ 11-4-614.

23 ~~Any An~~ employer who violates ~~any a~~ provision of §§ 11-4-607 – ~~11-4-612,~~
 24 ~~11-4-614~~ or who discharges or in any other manner discriminates against ~~any~~
 25 ~~an~~ employee because the employee has made a complaint to ~~his or her employer,~~
 26 ~~the Director of the Department of Labor, or any other person,~~ has instituted
 27 or caused to be instituted ~~any proceedings~~ a proceeding under or related to
 28 §§ 11-4-607 – ~~11-4-612~~ 11-4-614, or has testified or is about to testify in
 29 ~~any such a~~ proceeding under or related to §§ 11-4-607 – 11-4-614 upon
 30 conviction is guilty of an unclassified misdemeanor and shall be fined not
 31 more than five hundred dollars (\$500) nor imprisoned more than one (1) year,
 32 or both.

33
 34 11-4-609. Administration of §§ 11-4-607 – ~~11-4-612~~ 11-4-614.

35 The Director of the Department of Labor shall ~~have the power and it~~
 36 ~~shall be his or her duty to~~ carry out and administer the provisions of §§ 11-

1 4-607 - ~~11-4-612~~ 11-4-614.

2
3 11-4-610. ~~Wage~~ Sex-based wage discrimination ~~between sexes~~ prohibited.

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

5 (1) discriminate Discriminate in the payment of wages ~~as between~~
6 ~~the sexes~~ on the basis of sex; or ~~shall pay any~~

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

11 (b) ~~Nothing in §§ Sections~~ 11-4-607 - 11-4-612 shall 11-4-614 do not
12 prohibit a variation in rates of pay ~~based upon a difference in seniority,~~
13 ~~experience, training, skill, ability, differences in duties and services~~
14 ~~performed, differences in the shift or time of the day worked, or any other~~
15 ~~reasonable differentiation except difference in sex~~ when the employer
16 demonstrates the following:

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

19 (A) A seniority system;

20 (B) A merit system;

21 (C) A system that measures earning by quantity or quality
22 of production; or

23 (D)(i) A bona fide factor other than sex, including
24 without limitation education, training, experience, skill, ability,
25 differences in duties and services performed, and differences in the shift or
26 time of the day worked.

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

29 (a) Apply only if the employer demonstrates
30 that the factor is not based on or derived from a sex-based differential in
31 compensation, is job related with respect to the position in question, and is
32 consistent with an overriding legitimate business purpose such that the
33 factor relied on effectively fulfills the business purpose the factor is
34 intended to serve; and

35 (b) Do not apply if the employee demonstrates
36 that an alternative business practice exists that would serve the same

1 business purpose without producing the differential in compensation;

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

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

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

7
8 11-4-611. ~~Action~~ Actions to collect unpaid salary or wages.

9 (a)(1) An employer who violates the provisions of § 11-4-610 ~~shall be~~
10 is liable to the employee or employees affected in the amount of ~~their unpaid~~
11 the salary or wages that each employee is deprived of by reason of the
12 violation.

13 (2) However, if an employee recovers any moneys under federal
14 law for the same violation, the employee shall return to the employer the
15 lesser of the amount recovered under this section or the amount recovered
16 under federal law.

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

20 (2) ~~Any~~ An agreement between the employer and the employee for
21 that employee to work for less than the salary or wage to which the employee
22 is entitled under §§ 11-4-607 - ~~11-4-612~~ shall be 11-4-614 ~~is~~ no defense to
23 the action.

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

27 (4)(A) At the request of ~~any~~ an employee paid less than the
28 salary or wage to which he or she is entitled under §§ 11-4-607 - ~~11-4-612~~
29 11-4-614, the Director of the Department of Labor ~~may~~ may:

30 (i) May take an assignment of the salary or wage
31 claim in trust for the employee; and ~~shall~~

32 (ii) Shall bring any legal action necessary to
33 collect the claim.

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

36 (c)(1) An employee may file a complaint with the Department of Labor

1 alleging that an employer has violated § 11-4-610.

2 (2) The department shall:

3 (A) Investigate each complaint filed under this
4 subdivision (c)(1) of this section;

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

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

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

14 (3)(A) If the department finds that an employer has violated §
15 11-4-610, the department may supervise the payment of salary or wages and
16 interest found to be due and unpaid to employees under § 11-4-610 and this
17 section.

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

21 (d)(1)(A) Unless the affected employee or group of employees request
22 otherwise, the department may commence and prosecute a civil action on behalf
23 of the employee and a similarly affected group of employees to recover unpaid
24 salary or wages, interest, and liquidated damages for a violation under § 11-
25 4-610.

26 (B) If the department pursues a civil action under
27 subdivision (d)(1)(A) of this section, the department may recover the costs
28 of the civil action if the civil action is successful.

29 (2)(A) The consent of an employee to the bringing of a civil
30 action is a waiver by the employee of the employee's cause of action under
31 this section unless the civil action is dismissed without prejudice by the
32 department.

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

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

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

6 (2) If the cause of action arises out of willful violation of §
 7 11-4-610, three (3) years after the cause of action accrues.

8
 9 11-4-612. Employer to keep records.

10 (a) ~~Every~~ An employer subject to §§ 11-4-607 – ~~11-4-612~~ 11-4-614 shall
 11 keep and maintain records of the salaries and wage rates, job
 12 classifications, and other terms and conditions of employment of ~~the persons~~
 13 ~~employed by him or her~~ each employee of the employer, and the records shall
 14 be preserved for a period of *three (3)* years.

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

18
 19 SECTION 2. Arkansas Code Title 11, Chapter 4, Subchapter 6, is amended
 20 to add *additional sections* to read as follows:

21 11-4-613. Action for discrimination or retaliation.

22 (a) An employer shall not:

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

25 (2) Prohibit an employee from:

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

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

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

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

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

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

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(1) Reinstatement;

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

(3) Any appropriate equitable relief.

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

11-4-614. Rules.

The Department of Labor may promulgate rules to implement and administer this subchapter.

/s/Love