

New York State Poised to Expand Protections Against Discriminatory Pay Practices

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The New York State legislature has [passed a bill](#) that, if signed by Governor Andrew Cuomo, will expand pay protections by requiring employers to provide employees with equal pay for “substantially similar” work across all protected categories under the New York State Human Rights Law (NYSHRL).

Currently, the New York Equal Pay Act provides that no employee shall be paid at a lesser wage rate than an employee of the opposite sex in the same establishment for equal work on a job requiring equal skill, effort and responsibility, and performed under similar working conditions. As we [previously reported](#), the Equal Pay Act was last amended in 2015 by the Achieve Pay Equity law, which, among other things, narrowed the defenses available to employers facing a claim of gender-based wage discrimination by requiring that they show, among other non-discriminatory reasons for the wage differential, a “bona fide factor such as education, training or experience” that supports the difference in pay (previously, an employer need only show that the differential was based on any “factor other than sex”).

The recently passed bill would further broaden protections under the Equal Pay Act by requiring that no employee who falls into any one or more protected classes under the NYSHRL (not just sex) be paid a wage at a rate less than the rate at which an employee outside the same protected class in the same establishment is paid for either equal work (as defined above) or “substantially similar work, when viewed as a composite of skill, effort and responsibility, and performed under similar working conditions.”

Thus, protections against discriminatory pay differences would be provided to employees based not only on sex, but also on their age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, disability, predisposing genetic characteristics, familial status, marital status or domestic violence victim status. Further, the law would in fact lessen the burden on employees to prove wage discrimination by requiring employers to ensure equal pay for “substantially similar” work, and not just “equal” work.

Employers would still be able to demonstrate that differentials in pay are justified by a seniority system, merit system, a system which measures earnings by quantity or quality of production; or a bona fide factor such as education, training or experience. However, as is presently the case under the law, employees may still prevail on a claim if they can demonstrate that: (i) the employer’s practice causes a disparate impact on the basis of a protected class; (ii) a viable alternative practice exists that would remove the wage differential and serve the same business purpose; and (iii) the employer refused to adopt the alternative practice.

Under the recently passed bill, the state Labor Department would be authorized to assess penalties for differential pay rates tied to protected classes up to \$500 for each violation. And, as is true now, employees can bring suit for discriminatory pay differentials and seek liquidated damages of up to 300 percent on unpaid wages for willful violations of the law, as well as attorneys’ fees.

If signed by the Governor, the law will take effect on the ninetieth day after it is enacted.

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