

1                                   A bill to be entitled  
 2           An act relating to discrimination in labor and  
 3           employment; creating the "Helen Gordon Davis Fair Pay  
 4           Protection Act"; amending s. 448.07, F.S.; revising  
 5           provisions prohibiting discrimination on the basis of  
 6           sex to include discrimination on the basis of gender  
 7           identity; providing definitions; prohibiting an  
 8           employer from providing less favorable employment  
 9           opportunities to employees based on their sex or  
 10          gender identity; providing exceptions; specifying  
 11          civil penalties; revising applicability; amending s.  
 12          448.102, F.S.; prohibiting an employer from taking  
 13          certain employment actions against employees; creating  
 14          s. 448.111, F.S.; prohibiting an employer from  
 15          engaging in certain activities relating to employee  
 16          wages and benefits or requiring an employee to sign  
 17          certain waivers; providing an effective date.

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 19 Be It Enacted by the Legislature of the State of Florida:

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 21           Section 1. This act may be cited as the "Helen Gordon  
 22 Davis Fair Pay Protection Act."

23           Section 2. Section 448.07, Florida Statutes, is amended to  
 24 read:

25           448.07 Wage rate discrimination based on sex or gender

26 identity prohibited.—

27 (1) DEFINITIONS.—As used in this section, unless the  
28 context or subject matter clearly requires otherwise, the  
29 following terms shall have the meanings as defined in this  
30 section:

31 (a) "Business necessity" means an overriding legitimate  
32 business purpose that relies on a bona fide factor, as described  
33 in subparagraph (2) (a)4., to effectively fulfill such business  
34 purpose.

35 (b) ~~(a)~~ "Employee" means any individual employed by an  
36 employer, including individuals employed by the state or any of  
37 its political subdivisions or instrumentalities of subdivisions.

38 (c) ~~(b)~~ "Employer" means any person who employs two or more  
39 employees.

40 (d) "Gender identity" means an individual's identification  
41 of self as male, female, a combination of male and female, or  
42 neither male or female, regardless of the individual's  
43 physiology or assigned sex at birth.

44 (e) "Less favorable employment opportunities" means:

45 1. Assigning or directing an employee to a position or  
46 career track in which the work performed requires substantially  
47 less skill, effort, and responsibility than the work performed  
48 by the majority of individuals in the employee's same occupation  
49 and labor market area;

50 2. Assigning the employee work less likely to lead to a

51 promotion or career advancement opportunity; or

52 3. Limiting or depriving an employee of a promotion or  
 53 career advancement opportunity that would otherwise be available  
 54 to the employee but for the employee's sex or gender identity.

55 (f)(d) "Rate" with reference to wages means the basis of  
 56 compensation for services by an employee for an employer and  
 57 includes compensation based on time spent in the performance of  
 58 such services, on the number of operations accomplished, or on  
 59 the quality produced or handled.

60 (g)(e) "Unpaid wages" means the difference between the  
 61 wages actually paid to an employee and the wages required to be  
 62 paid to an employee pursuant to subsection (3).

63 (h)(e) "Wages" means and includes all compensation paid by  
 64 an employer or the employer's ~~his or her~~ agent for the  
 65 performance of service by an employee, including the cash value  
 66 of all compensation paid in any medium other than cash.

67 (2) DISCRIMINATION BASED ON BASIS OF SEX OR GENDER  
 68 IDENTITY PROHIBITED.—

69 (a) An ~~Ne~~ employer may not provide less favorable  
 70 employment opportunities to employees based on their ~~shall~~  
 71 discriminate between employees on the basis of sex or gender  
 72 identity or pay by paying wages to employees at a rate less than  
 73 the rate the employer ~~at which he or she~~ pays wages to employees  
 74 of the opposite sex or a different gender identity for  
 75 substantially similar ~~equal~~ work on jobs the performance of

76 | which requires equal skill, effort, and responsibility, and  
 77 | which are performed under similar working conditions, except  
 78 | when the employer demonstrates the entire wage differential is  
 79 | based on one or more of the following reasonably applied factors  
 80 | ~~when such payment is made pursuant to:~~

- 81 | 1. A seniority system;
- 82 | 2. A merit system;
- 83 | 3. A system that ~~which~~ measures earnings by quantity or  
 84 | quality of production; or
- 85 | 4. A bona fide differential based on any reasonable factor  
 86 | other than sex or gender identity, including, but not limited  
 87 | to, education, training, or experience. This subparagraph only  
 88 | applies if the employer demonstrates that the factor is not  
 89 | based on, or derived from, a sex-based or gender identity-based  
 90 | wage differential, is job related with respect to the position  
 91 | in question, and is consistent with a business necessity.

92 | (b) An employer who is paying a wage in violation of this  
 93 | section may not reduce another employee's wage to comply with  
 94 | this section ~~when exercised in good faith.~~

95 | ~~(c)(b)~~ A ~~No~~ person may not ~~shall~~ cause or attempt to cause  
 96 | an employer to discriminate against an ~~any~~ employee in violation  
 97 | ~~of the provisions of this section.~~

98 | (3) CIVIL ACTION FOR UNPAID WAGES.—Any employer or person  
 99 | who violates ~~the provisions of~~ this section is liable to the  
 100 | employee for the amount of the difference between the amount the

101 employee was paid and the amount he or she should have been paid  
 102 under this section. Nothing in this section allows a claimant to  
 103 recover more than an amount equal to any ~~his or her~~ unpaid wages  
 104 ~~while so employed for 1 year prior to the filing of the claim.~~

105 An action to recover such liability may be maintained in any  
 106 court of competent jurisdiction by the aggrieved employee within  
 107 6 months after termination of employment. The court in such  
 108 action may award to the prevailing party costs of the action and  
 109 a reasonable attorney ~~attorney's~~ fee.

110 (4) CIVIL PENALTIES FOR VIOLATIONS.-

111 (a) An employer who violates this section is subject to a  
 112 civil penalty of:

- 113 1. Up to \$2,500 for a first violation.
- 114 2. Up to \$3,000 for a second violation.
- 115 3. Up to \$5,000 for a third and each subsequent violation.

116 (b) In determining the amount of a civil penalty to be  
 117 assessed under paragraph (a), a court of competent jurisdiction  
 118 shall consider the severity of the violation.

119 (5) A minority business enterprise, as defined in s.  
 120 288.703, is exempt from this section.

121 ~~(4) Nothing in this section or in s. 725.07, relating to~~  
 122 ~~discrimination based on sex in providing equal pay for equal~~  
 123 ~~services performed, is applicable to any employer, labor~~  
 124 ~~organization or member thereof, or employee whose employer is~~  
 125 ~~subject to the federal Fair Labor Standards Act of 1938, as~~

126 ~~amended.~~

127 Section 3. Subsection (4) is added to section 448.102,  
128 Florida Statutes, to read:

129 448.102 Prohibitions.—An employer may not take any  
130 retaliatory personnel action against an employee because the  
131 employee has:

132 (4) (a) Discussed or disclosed the employee's own wages;

133 (b) Inquired about another employee's wages;

134 (c) Discussed another employee's wages if such wages have  
135 been voluntarily disclosed by such employee;

136 (d) Requested that the employer provide a reason for the  
137 amount of the employee's own wages; or

138 (e) Aided or encouraged another employee to exercise  
139 rights under this chapter.

140 Section 4. Section 448.111, Florida Statutes, is created  
141 to read:

142 448.111 Prohibited employer activities related to wages  
143 and benefits.—An employer may not:

144 (1) (a) 1. Screen a job applicant based on prior wages or  
145 benefits or require that the applicant's prior wages or benefits  
146 satisfy minimum or maximum criteria.

147 2. Request or require as a condition of being interviewed,  
148 or as a condition of continued consideration for an employment  
149 offer, that an applicant disclose prior wages or benefits.

150 (b) Request or inquire about the prior wages or benefits

151 of an applicant from a current or former employer. However, an  
152 applicant may provide written authorization to a prospective  
153 employer to confirm such prior wages or benefits after an  
154 employment offer with compensation has been made to the  
155 applicant.

156 (2) Prohibit an employee from:

157 (a) Discussing or disclosing the employee's own wages;

158 (b) Inquiring about another employee's wages;

159 (c) Discussing another employee's wages if such wages have  
160 been voluntarily disclosed by such employee; or

161 (d) Requesting that the employer provide a reason for the  
162 amount of the employee's own wages.

163 (3) Require an employee to sign a waiver or any other  
164 document that prohibits the employee from:

165 (a) Discussing or disclosing the employee's own wages;

166 (b) Inquiring about another employee's wages; or

167 (c) Discussing another employee's wages if such wages have  
168 been voluntarily disclosed by such employee.

169 Section 5. This act shall take effect July 1, 2017.