

1 A bill to be entitled
 2 An act relating to discrimination in labor and
 3 employment; creating the "Senator Helen Gordon Davis
 4 Fair Pay Protection Act"; amending s. 448.07, F.S.;
 5 providing definitions; prohibiting an employer from
 6 providing less favorable employment opportunities to
 7 employees based on their sex; providing exceptions;
 8 revising applicability; providing civil penalties;
 9 providing an exemption; amending s. 448.102, F.S.;
 10 prohibiting an employer from taking certain employment
 11 actions against employees; creating s. 448.111, F.S.;
 12 prohibiting an employer from engaging in certain
 13 activities relating to employee wages and benefits or
 14 requiring employees to sign certain waivers and
 15 documents; providing applicability; authorizing an
 16 employer to confirm wage or salary history under
 17 certain conditions; 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 "Senator Helen
 22 Gordon 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 prohibited.-

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

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

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

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

39 (d) "Less favorable employment opportunity" means:

40 1. Assigning or directing an employee to a position or
41 career track in which the work performed requires substantially
42 less skill, effort, and responsibility than the work performed
43 by the majority of individuals in the employee's same occupation
44 and labor market area;

45 2. Failing to provide an employee with information about
46 promotions or advancement in the full range of career tracks
47 offered by the employer;

48 3. Assigning the employee work less likely to lead to a
49 promotion or career advancement opportunity; or

50 4. Limiting or depriving an employee of a promotion or

51 career advancement opportunity that would otherwise be available
 52 to the employee but for the employee's sex.

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

58 (f)-(e) "Unpaid wages" means the difference between the
 59 wages actually paid to an employee and the wages required to be
 60 paid to an employee pursuant to subsection (3).

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

65 (2) DISCRIMINATION BASED ON ~~BASIS OF~~ SEX PROHIBITED.-

66 (a) An ~~No~~ employer may not provide a less favorable
 67 employment opportunity to an employee based on the employee's
 68 ~~shall discriminate between employees on the basis of sex or pay~~
 69 the employee by paying wages to employees at a rate less than
 70 the rate the employer ~~at which he or she~~ pays wages to an
 71 employee ~~employees~~ of the opposite sex for substantially similar
 72 equal work on a job ~~jobs~~ the performance of which requires equal
 73 skill, effort, and responsibility, and which is ~~are~~ performed
 74 under similar working conditions, except when the employer
 75 demonstrates the entire wage differential is based on one or

76 more of the following reasonably applied factors ~~when such~~
 77 ~~payment is made pursuant to:~~

- 78 1. A seniority system;
- 79 2. A merit system;
- 80 3. A system that ~~which~~ measures earnings by quantity or
 81 quality of production; or
- 82 4. A bona fide differential based on any reasonable factor
 83 other than sex, including, but not limited to, education,
 84 training, or experience. This subparagraph only applies if the
 85 employer demonstrates that the factor is not based on, or
 86 derived from, a sex-based wage differential, is job related with
 87 respect to the position in question, and is consistent with a
 88 business necessity. This subparagraph does not apply if the
 89 employee demonstrates that an alternative business practice
 90 exists that would serve the same business purpose without
 91 producing the wage differential.

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 plus liquidated damages. ~~Nothing in this~~
103 ~~section allows a claimant to recover more than an amount equal~~
104 ~~to his or her unpaid wages while so employed for 1 year prior to~~
105 ~~the filing of the claim.~~ An action to recover such liability may
106 be maintained in any court of competent jurisdiction by one or
107 more employees on their own behalf or on behalf of other
108 employees similarly situated ~~the aggrieved employee~~ within 3
109 years ~~6 months~~ after the date of the alleged violation
110 ~~termination of employment.~~ For purposes of this subsection, a
111 violation occurs when a discriminatory compensation decision or
112 other practice is adopted, when an employee becomes subject to a
113 discriminatory compensation decision or other practice, or when
114 an employee is affected by the application of a discriminatory
115 compensation decision or other practice, including each time
116 wages are paid, resulting in whole or in part from such decision
117 or other practice. The court in such action may award to the
118 prevailing party costs of the action and a reasonable attorney
119 attorney's fee.

120 (4) CIVIL PENALTIES.—

121 (a) An employer who violates this section is subject to a
122 civil penalty:

- 123 1. Not to exceed \$2,500 for a first violation.
- 124 2. Not to exceed \$3,000 for a second violation.
- 125 3. Not to exceed \$5,000 for a third or subsequent

126 violation.

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

130 (5) EXEMPTION.—A minority business enterprise, as defined
131 in s. 288.703, is exempt from this section.

132 ~~(4) Nothing in this section or in s. 725.07, relating to~~
133 ~~discrimination based on sex in providing equal pay for equal~~
134 ~~services performed, is applicable to any employer, labor~~
135 ~~organization or member thereof, or employee whose employer is~~
136 ~~subject to the federal Fair Labor Standards Act of 1938, as~~
137 ~~amended.~~

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

140 448.102 Prohibitions.—An employer may not take any
141 retaliatory or discriminatory personnel action against an
142 employee because the employee has:

143 (1) Disclosed, or threatened to disclose, to any
144 appropriate governmental agency, under oath, in writing, an
145 activity, policy, or practice of the employer that is in
146 violation of a law, rule, or regulation. However, this
147 subsection does not apply unless the employee has, in writing,
148 brought the activity, policy, or practice to the attention of a
149 supervisor or the employer and has afforded the employer a
150 reasonable opportunity to correct the activity, policy, or

151 practice.

152 (2) Provided information to, or testified before, any
153 appropriate governmental agency, person, or entity conducting an
154 investigation, hearing, or inquiry into an alleged violation of
155 a law, rule, or regulation by the employer.

156 (3) Objected to, or refused to participate in, any
157 activity, policy, or practice of the employer which is in
158 violation of a law, rule, or regulation.

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

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

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

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

165 (e) Testified or will testify, assisted, or participated
166 in an investigation or proceeding under this section.

167 Section 4. Section 448.111, Florida Statutes, is created
168 to read:

169 448.111 Prohibited employer activities related to wages
170 and benefits.—

171 (1) An employer may not:

172 (a) Rely on the wage or salary history of an employee in
173 determining the wages or salary for such individual.

174 (b) Orally or in writing seek, request, or require the
175 wage or salary history from an employee as a condition to be

176 interviewed, as a condition of continuing to be considered for
177 an offer of employment, or as a condition of employment or
178 promotion.

179 (c) Orally or in writing seek, request, or require the
180 wage or salary history of an employee from a current or former
181 employer except as provided in subsection (3).

182 (d) Refuse to interview, hire, promote, otherwise employ,
183 or otherwise retaliate against an employee:

184 1. Based upon prior wage or salary history.

185 2. Because the employee did not provide wage or salary
186 history in accordance with this section.

187 3. Because the employee filed a complaint alleging a
188 violation of this section.

189 (e) Prohibit an employee from:

190 1. Discussing or disclosing the employee's own wages;

191 2. Inquiring about another employee's wages;

192 3. Discussing another employee's wages if such wages have
193 been voluntarily disclosed by such employee; or

194 4. Requesting that the employer provide a reason for the
195 amount of the employee's own wages.

196 (f) Require an employee to sign a waiver or any other
197 document that prohibits the employee from:

198 1. Discussing or disclosing the employee's own wages;

199 2. Inquiring about another employee's wages; or

200 3. Discussing another employee's wages if such wages have

201 been voluntarily disclosed by such employee.

202 (2) This section does not prevent an employee from
203 voluntarily disclosing wage or salary history, including, but
204 not limited to, for the purposes of negotiating wages or salary.

205 (3) An employer may confirm wage or salary history only
206 if, at the time an offer of employment with compensation is
207 made, the employee responds to the offer by providing prior wage
208 information to support a wage higher than that offered by the
209 employer.

210 Section 5. This act shall take effect July 1, 2018.