

Senate File 242 - Introduced

SENATE FILE 242

BY DOTZLER

(COMPANION TO HF 146 BY STAED)

A BILL FOR

1 An Act relating to wage discrimination under the Iowa civil
2 rights Act of 1965 and in state contracting, making
3 penalties applicable, and establishing an equal pay task
4 force.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 19B.7A State contracts — race and
2 gender compensation reporting.

3 1. For purposes of ensuring compliance with chapter 216
4 and this chapter, a nonstate party to a contract for goods or
5 services with the state shall submit the following information
6 regarding each of its employees in a report to the department
7 of administrative services and the civil rights commission
8 annually by January 1:

- 9 a. Total annual compensation.
- 10 b. Occupation.
- 11 c. Sex.
- 12 d. Race.
- 13 e. Length of employment.
- 14 f. Highest level of education attained.
- 15 g. Years of experience relevant to the employee's job.

16 2. Names of employees shall not be included in the report.

17 Sec. 2. Section 216.6A, Code 2019, is amended by adding the
18 following new subsections:

19 NEW SUBSECTION. 2A. It shall be an unfair or discriminatory
20 practice for any employer or agent of any employer to do any of
21 the following:

22 a. Require, as a condition of employment, that an employee
23 refrain from disclosing, discussing, or sharing information
24 about the amount of the employee's wages, benefits, or other
25 compensation or from inquiring, discussing, or sharing
26 information about any other employee's wages, benefits, or
27 other compensation.

28 b. Require, as a condition of employment, that an employee
29 sign a waiver or other document that requires an employee to
30 refrain from engaging in any of the activities permitted under
31 paragraph "a".

32 c. Discriminate or retaliate against an employee for
33 engaging in any of the activities permitted under paragraph "a".

34 d. Seek salary history information, including but not
35 limited to information on compensation and benefits, from

1 a potential employee as a condition of a job interview or
2 employment. This paragraph shall not be construed to prohibit
3 a prospective employer from asking a prospective employee what
4 salary level the prospective employee would require in order to
5 accept a job.

6 e. Release the salary history, including but not limited
7 to information on compensation and benefits, of any current
8 or former employee to any prospective employer in response to
9 a request as part of an interview or hiring process without
10 written authorization from such current or former employee.

11 f. Publish, list, or post within the employer's
12 organization, with any employment agency, job-listing
13 service, or internet site, or in any other public manner, an
14 advertisement to recruit candidates for hire or independent
15 contractors to fill a position within the employer's
16 organization without including the minimum rate of pay of the
17 position. The rate of pay may be by the hour, shift, day, week,
18 salary, piece, commission, or other applicable rate. The rate
19 of pay shall include overtime and allowances, if any, claimed
20 as part of the minimum wage, including but not limited to
21 tipped wages.

22 g. Pay a newly hired employee at less than the rate of pay
23 advertised for the employee's position under paragraph "f".

24 NEW SUBSECTION. 5. The commission shall establish a
25 statewide, toll-free telephone hotline for the purpose of
26 receiving reports of violations of this section.

27 Sec. 3. Section 216.6A, subsection 3, Code 2019, is amended
28 to read as follows:

29 3. a. It shall be an affirmative defense to a claim arising
30 under [this section](#) if any of the following applies:

31 ~~a.~~ (1) Payment of wages is made pursuant to a seniority
32 system.

33 ~~b.~~ (2) Payment of wages is made pursuant to a merit system.

34 ~~c.~~ (3) Payment of wages is made pursuant to a system which
35 measures earnings by quantity or quality of production.

1 ~~d.~~ (4) Pay differential is based on any other bona fide
2 factor other than the age, race, creed, color, sex, sexual
3 orientation, gender identity, national origin, religion,
4 or disability of such employee, including but not limited
5 to a bona fide factor relating to education, training, or
6 experience. This defense shall apply only if the employer
7 demonstrates that the factor is not based on or derived from
8 a differential in compensation based on age, race, creed,
9 color, sex, sexual orientation, gender identity, national
10 origin, religion, or disability; is job related with respect
11 to the position in question; and is consistent with a business
12 necessity. For purposes of this subparagraph, "business
13 necessity" means an overriding legitimate business purpose
14 such that the factor relied upon effectively fulfills the
15 business purpose it is supposed to serve. This affirmative
16 defense shall not apply if the employee demonstrates that an
17 alternative business practice exists that would serve the same
18 business purpose without producing the wage differential.
19 b. An affirmative defense under this subsection is not
20 applicable unless one or more of the defenses listed in
21 paragraph "a" account for the entire pay differential that is
22 the subject of the claim.

23 Sec. 4. EQUAL PAY TASK FORCE AND REPORT.

24 1. An equal pay task force is created. The task force shall
25 consist of the following members:

26 a. The director of the civil rights commission, or the
27 director's designee.

28 b. The director of the department of human rights, or the
29 director's designee.

30 c. An employee of the labor market information division
31 of the department of workforce development designated by the
32 director of the department.

33 d. A representative of the association of business and
34 industry, appointed by the president of the association.

35 e. A member of a statewide labor organization appointed by

1 the president of the organization.

2 f. Two representatives of organizations whose objectives
3 include the elimination of pay disparities between men and
4 women and minorities and nonminorities and that have undertaken
5 advocacy, educational, or legislative initiatives in pursuit
6 of such objectives appointed by the director of the civil
7 rights commission in consultation with the leadership of those
8 organizations.

9 g. Two representatives of postsecondary education
10 institutions who have experience and expertise in the
11 collection and analysis of data concerning pay disparities
12 between men and women and minorities and nonminorities
13 and whose research has been used in efforts to promote the
14 elimination of such disparities appointed by the director of
15 the civil rights commission in consultation with the leadership
16 of those institutions.

17 h. Four members of the general assembly serving as
18 ex officio, nonvoting members, one representative to be
19 appointed by the speaker of the house of representatives, one
20 representative to be appointed by the minority leader of the
21 house of representatives, one senator to be appointed by the
22 majority leader of the senate, and one senator to be appointed
23 by the minority leader of the senate.

24 2. The task force shall study all of the following:

25 a. The extent of wage disparities, both in the public and
26 private sectors, between men and women and between minorities
27 and nonminorities.

28 b. Factors that cause, or which tend to cause, such
29 disparities, including segregation between women and
30 men and between minorities and nonminorities across and
31 within occupations, payment of lower wages for work in
32 female-dominated occupations, child-rearing responsibilities,
33 the number of women who are heads of households, education,
34 hours worked, and years on the job.

35 c. The consequences of such disparities on the economy and

1 affected families.

2 d. Actions likely to lead to the elimination and prevention
3 of such disparities.

4 3. The civil rights commission shall provide staffing
5 services for the task force.

6 4. The voting members shall elect a chairperson from the
7 voting membership of the task force. A majority of the voting
8 members of the task force constitutes a quorum.

9 5. Voting members of the task force shall receive
10 reimbursement for actual expenses incurred while serving
11 in their official capacity only if they are not eligible
12 for reimbursement by the organization that they represent.
13 Legislative members shall be paid the per diem and expenses
14 specified in section 2.10.

15 6. The task force shall submit a report regarding its
16 findings and its recommendations regarding potential actions
17 for the elimination and prevention of disparities in wages
18 between men and women and minorities and nonminorities to the
19 governor and the general assembly no later than December 18,
20 2020.

21 EXPLANATION

22 The inclusion of this explanation does not constitute agreement with
23 the explanation's substance by the members of the general assembly.

24 This bill relates to wage discrimination under Code chapter
25 216, the Iowa civil rights Act of 1965, and state contracting,
26 and establishes an equal pay task force.

27 WAGE DISCRIMINATION IN STATE CONTRACTING. The bill requires
28 a nonstate party to a contract for goods or services with the
29 state to submit certain information regarding each of its
30 employees in a report to the department of administrative
31 services and the civil rights commission annually by January 1
32 for purposes of ensuring compliance with Code chapters 19B and
33 216. The required information is an employee's total annual
34 compensation, occupation, sex, race, length of employment,
35 highest level of education attained, and years of experience

1 relevant to the employee's job. Names of employees shall not
2 be included in the report.

3 WAGE DISCRIMINATION IN EMPLOYMENT. The bill establishes
4 additional unfair or discriminatory practices relating to wages
5 under Code section 216.6A. Penalty and remedial provisions
6 for discriminatory employment practices, including penalties
7 specific to wage discrimination, are applicable under Code
8 chapter 216 to violations of these requirements.

9 The bill prohibits an employer from requiring that an
10 employee refrain from disclosing, discussing, or sharing
11 information about the amount of the employee's wages, benefits,
12 or other compensation or from inquiring, discussing, or sharing
13 information about any other employee's wages, benefits, or
14 other compensation as a condition of employment. The bill
15 prohibits an employer from requiring that an employee sign a
16 waiver or other document that requires an employee to refrain
17 from engaging in any of those activities as a condition of
18 employment. The bill prohibits an employer from discriminating
19 or retaliating against an employee for engaging in any of the
20 activities.

21 The bill prohibits an employer from seeking salary history
22 information from a potential employee as a condition of a job
23 interview or employment. This provision shall not be construed
24 to prohibit a prospective employer from asking a prospective
25 employee what salary level the prospective employee would
26 require in order to accept a job.

27 The bill prohibits an employer from releasing the salary
28 history of any current or former employee to any prospective
29 employer in response to a request as part of an interview or
30 hiring process without written authorization from such current
31 or former employee.

32 The bill prohibits an employer from publishing, listing, or
33 posting within the employer's organization, with any employment
34 agency, job-listing service, or internet site, or in any other
35 public manner, an advertisement to recruit candidates for

1 hire or independent contractors to fill a position within the
2 employer's organization without including the minimum rate of
3 pay of the position. The rate of pay shall include overtime
4 and allowances, if any, claimed as part of the minimum wage,
5 including but not limited to tipped wages. The bill prohibits
6 an employer from paying a newly hired employee at less than the
7 rate of pay advertised for the employee's position.

8 Under current law, an employer has an affirmative defense
9 to a claim under Code section 216.6A if a pay differential
10 is based on any other factor other than prohibited wage
11 discrimination. The bill provides that an employer has an
12 affirmative defense to a claim under Code section 216.6A if a
13 pay differential is based on any other bona fide factor other
14 than prohibited discrimination, including but not limited
15 to a bona fide factor relating to education, training, or
16 experience. However, this defense shall only apply if the
17 employer demonstrates that the factor is not based on or
18 derived from prohibited wage discrimination, is job related
19 with respect to the position in question, and is consistent
20 with a business necessity. The bill defines "business
21 necessity" as an overriding legitimate business purpose
22 such that the factor relied upon effectively fulfills the
23 business purpose it is supposed to serve. This affirmative
24 defense shall not apply if the employee demonstrates that an
25 alternative business practice exists that would serve the same
26 business purpose without producing the wage differential.

27 The bill provides that affirmative defenses to a claim under
28 Code section 216.6A are not applicable unless one or more of
29 the defenses account for the entire pay differential that is
30 the subject of the claim.

31 The bill also requires the civil rights commission to
32 establish a statewide, toll-free telephone hotline for the
33 purpose of receiving reports of violations of Code section
34 216.6A.

35 EQUAL PAY TASK FORCE. The bill creates an equal pay task

1 force to study the extent of discriminatory wage disparities
2 in the public and private sectors, the factors that cause
3 such disparities, the consequences of such disparities, and
4 actions likely to lead to the elimination and prevention of
5 such disparities.

6 The bill establishes the membership of the task force,
7 including ex officio, nonvoting legislative members. The civil
8 rights commission shall provide staffing services for the task
9 force.

10 The task force shall submit a report regarding its findings
11 and its recommendations regarding potential actions for the
12 elimination and prevention of discriminatory wage disparities
13 to the governor and the general assembly no later than December
14 18, 2020.