

Senate File 139 - Introduced

SENATE FILE 139

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A BILL FOR

1 An Act relating to wage discrimination under the Iowa civil
2 rights Act of 1965, making penalties applicable, and
3 establishing an equal pay task force.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 216.6A, Code 2021, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 2A. It shall be an unfair or discriminatory
4 practice for any employer or agent of any employer to do any of
5 the following:

6 a. Require, as a condition of employment, that an employee
7 refrain from disclosing, discussing, or sharing information
8 about the amount of the employee's wages, benefits, or other
9 compensation or from inquiring, discussing, or sharing
10 information about any other employee's wages, benefits, or
11 other compensation.

12 b. Require, as a condition of employment, that an employee
13 sign a waiver or other document that requires an employee to
14 refrain from engaging in any of the activities permitted under
15 paragraph "a".

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

18 d. Seek salary history information, including but not
19 limited to information on compensation and benefits, from
20 a potential employee as a condition of a job interview or
21 employment. This paragraph shall not be construed to prohibit
22 a prospective employer from asking a prospective employee what
23 salary level the prospective employee would require in order to
24 accept a job.

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

30 Sec. 2. Section 216.6A, subsection 3, Code 2021, is amended
31 to read as follows:

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

34 ~~a.~~ (1) Payment of wages is made pursuant to a seniority
35 system.

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

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

4 ~~d.~~ (4) Pay differential is based on any other factor other
5 than the age, race, creed, color, sex, sexual orientation,
6 gender identity, national origin, religion, or disability
7 of such employee, including but not limited to a bona fide
8 factor relating to education, training, or experience.

9 This affirmative defense shall apply only if the employer
10 demonstrates that the factor is not based on or derived from
11 a differential in compensation based on age, race, creed,
12 color, sex, sexual orientation, gender identity, national
13 origin, religion, or disability; is job-related with respect
14 to the position in question; and is consistent with a business
15 necessity. For purposes of this subparagraph, "business
16 necessity" means an overriding legitimate business purpose
17 such that the factor relied upon effectively fulfills the
18 business purpose it is supposed to serve. This affirmative
19 defense shall not apply if the employee demonstrates that an
20 alternative business practice exists that would serve the same
21 business purpose without producing the wage differential.

22 b. An affirmative defense under this subsection is not
23 applicable unless one or more of the affirmative defenses
24 listed in paragraph "a" account for the entire pay differential
25 that is the subject of the claim.

26 Sec. 3. EQUAL PAY TASK FORCE AND REPORT.

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

29 a. The director of the civil rights commission, or the
30 director's designee.

31 b. The director of the department of human rights, or the
32 director's designee.

33 c. The director of the department of workforce development,
34 or the director's designee.

35 d. An employee of the labor market information division

1 of the department of workforce development designated by the
2 director of the department.

3 e. A representative of the association of business and
4 industry, appointed by the president of the association.

5 f. A member of a statewide labor organization appointed by
6 the president of the organization.

7 g. Two representatives of organizations whose objectives
8 include the elimination of pay disparities between men and
9 women and minorities and nonminorities and that have undertaken
10 advocacy, educational, or legislative initiatives in pursuit
11 of such objectives appointed by the director of the civil
12 rights commission in consultation with the leadership of those
13 organizations.

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

22 i. Four members of the general assembly serving as
23 ex officio, nonvoting members, one representative to be
24 appointed by the speaker of the house of representatives, one
25 representative to be appointed by the minority leader of the
26 house of representatives, one senator to be appointed by the
27 majority leader of the senate, and one senator to be appointed
28 by the minority leader of the senate.

29 2. Membership of the task force specified in subsection 1,
30 paragraphs "d" through "h", shall comply with section 69.16A.

31 3. The task force shall study all of the following:

32 a. The extent of wage disparities, both in the public and
33 private sectors, between men and women and between minorities
34 and nonminorities.

35 b. Factors that cause, or which tend to cause, such

1 disparities, including segregation between women and
2 men and between minorities and nonminorities across and
3 within occupations, payment of lower wages for work in
4 female-dominated occupations, child-rearing responsibilities,
5 the number of women who are heads of households, education,
6 hours worked, and years on the job.

7 c. The consequences of such disparities on the economy and
8 affected families.

9 d. Actions likely to lead to the elimination and prevention
10 of such disparities.

11 4. The department of workforce development shall provide
12 staffing services for the task force.

13 5. The voting members shall elect a chairperson from the
14 voting membership of the task force. A majority of the voting
15 members of the task force constitutes a quorum.

16 6. Voting members of the task force shall receive
17 reimbursement for actual expenses incurred while serving
18 in their official capacity only if they are not eligible
19 for reimbursement by the organization that they represent.
20 Legislative members shall be paid the per diem and expenses
21 specified in section 2.10.

22 7. The task force shall submit a report regarding its
23 findings and its recommendations regarding potential actions
24 for the elimination and prevention of disparities in wages
25 between men and women and minorities and nonminorities to the
26 governor and the general assembly no later than December 16,
27 2022.

28 EXPLANATION

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

31 This bill relates to wage discrimination under Code chapter
32 216, the Iowa civil rights Act of 1965, and establishes an
33 equal pay task force.

34 WAGE DISCRIMINATION IN EMPLOYMENT. The bill establishes
35 additional unfair or discriminatory practices relating to wages

1 under Code section 216.6A. Penalty and remedial provisions
2 for discriminatory employment practices, including penalties
3 specific to wage discrimination, are applicable under Code
4 chapter 216 to violations of these requirements.

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

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

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

28 Under current law, an employer has an affirmative defense
29 to a claim under Code section 216.6A if a pay differential
30 is based on any other factor other than prohibited wage
31 discrimination. The bill provides that an employer has an
32 affirmative defense to a claim under Code section 216.6A if a
33 pay differential is based on any other bona fide factor other
34 than prohibited discrimination, including but not limited
35 to a bona fide factor relating to education, training, or

1 experience. However, this defense shall only apply if the
2 employer demonstrates that the factor is not based on or
3 derived from prohibited wage discrimination, is job-related
4 with respect to the position in question, and is consistent
5 with a business necessity. The bill defines "business
6 necessity" as an overriding legitimate business purpose
7 such that the factor relied upon effectively fulfills the
8 business purpose it is supposed to serve. This affirmative
9 defense shall not apply if the employee demonstrates that an
10 alternative business practice exists that would serve the same
11 business purpose without producing the wage differential.

12 The bill provides that affirmative defenses to a claim under
13 Code section 216.6A are not applicable unless one or more of
14 the defenses account for the entire pay differential that is
15 the subject of the claim.

16 EQUAL PAY TASK FORCE. The bill creates an equal pay task
17 force to study the extent of discriminatory wage disparities
18 in the public and private sectors, the factors that cause
19 such disparities, the consequences of such disparities, and
20 actions likely to lead to the elimination and prevention of
21 such disparities.

22 The bill establishes the membership of the task force,
23 including ex officio, nonvoting legislative members. The
24 department of workforce development shall provide staffing
25 services for the task force.

26 The task force shall submit a report regarding its findings
27 and its recommendations regarding potential actions for the
28 elimination and prevention of discriminatory wage disparities
29 to the governor and the general assembly no later than December
30 16, 2022.