

Senate File 396 - Introduced

SENATE FILE 396

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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 2023, 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 f. Publish, list, or post within the employer's
31 organization, with any employment agency, job-listing
32 service, or internet site, or in any other public manner, an
33 advertisement to recruit candidates for hire or independent
34 contractors to fill a position within the employer's
35 organization without including the minimum rate of pay of the

1 position. The rate of pay may be by the hour, shift, day, week,
2 salary, piece, commission, or other applicable rate. The rate
3 of pay shall include overtime and allowances, if any, claimed
4 as part of the minimum wage, including but not limited to
5 tipped wages.

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

8 Sec. 2. Section 216.6A, subsection 3, Code 2023, is amended
9 to read as follows:

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

12 ~~a.~~ (1) Payment of wages is made pursuant to a seniority
13 system.

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

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

17 ~~d.~~ (4) Pay differential is based on any other bona fide
18 factor other than the age, race, creed, color, sex, sexual
19 orientation, gender identity, national origin, religion,
20 or disability of such employee, including but not limited
21 to a bona fide factor relating to education, training, or
22 experience. This defense shall apply only if the employer
23 demonstrates that the factor is not based on or derived from
24 a differential in compensation based on age, race, creed,
25 color, sex, sexual orientation, gender identity, national
26 origin, religion, or disability; is job related with respect
27 to the position in question; and is consistent with a business
28 necessity. For purposes of this subparagraph, "business
29 necessity" means an overriding legitimate business purpose
30 such that the factor relied upon effectively fulfills the
31 business purpose it is supposed to serve. This affirmative
32 defense shall not apply if the employee demonstrates that an
33 alternative business practice exists that would serve the same
34 business purpose without producing the wage differential.

35 b. An affirmative defense under this subsection is not

1 applicable unless one or more of the defenses listed in
2 paragraph "a" account for the entire pay differential that is
3 the subject of the claim.

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

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

7 a. The director of the civil rights commission, or the
8 director's designee.

9 b. The director of the department of human rights, or the
10 director's designee.

11 c. An employee of the labor market information division
12 of the department of workforce development designated by the
13 director of the department.

14 d. A representative of the association of business and
15 industry, appointed by the president of the association.

16 e. A member of a statewide labor organization appointed by
17 the president of the organization.

18 f. Two representatives of organizations whose objectives
19 include the elimination of pay disparities between men and
20 women and minorities and nonminorities and that have undertaken
21 advocacy, educational, or legislative initiatives in pursuit
22 of such objectives appointed by the director of the civil
23 rights commission in consultation with the leadership of those
24 organizations.

25 g. Two representatives of postsecondary education
26 institutions who have experience and expertise in the
27 collection and analysis of data concerning pay disparities
28 between men and women and minorities and nonminorities
29 and whose research has been used in efforts to promote the
30 elimination of such disparities appointed by the director of
31 the civil rights commission in consultation with the leadership
32 of those institutions.

33 h. Four members of the general assembly serving as
34 ex officio, nonvoting members, one representative to be
35 appointed by the speaker of the house of representatives, one

1 representative to be appointed by the minority leader of the
2 house of representatives, one senator to be appointed by the
3 majority leader of the senate, and one senator to be appointed
4 by the minority leader of the senate.

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

6 a. The extent of wage disparities, both in the public and
7 private sectors, between men and women and between minorities
8 and nonminorities.

9 b. Factors that cause, or which tend to cause, such
10 disparities, including segregation between women and
11 men and between minorities and nonminorities across and
12 within occupations, payment of lower wages for work in
13 female-dominated occupations, child-rearing responsibilities,
14 the number of women who are heads of households, education,
15 hours worked, and years on the job.

16 c. The consequences of such disparities on the economy and
17 affected families.

18 d. Actions likely to lead to the elimination and prevention
19 of such disparities.

20 3. The civil rights commission shall provide staffing
21 services for the task force.

22 4. The voting members shall elect a chairperson from the
23 voting membership of the task force. A majority of the voting
24 members of the task force constitutes a quorum.

25 5. Voting members of the task force shall receive
26 reimbursement for actual expenses incurred while serving
27 in their official capacity only if they are not eligible
28 for reimbursement by the organization that they represent.
29 Legislative members shall be paid the per diem and expenses
30 specified in section 2.10.

31 6. The task force shall submit a report regarding its
32 findings and its recommendations regarding potential actions
33 for the elimination and prevention of disparities in wages
34 between men and women and minorities and nonminorities to the
35 governor and the general assembly no later than December 29,

1 2023.

2

EXPLANATION

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

4

5

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

8

WAGE DISCRIMINATION IN EMPLOYMENT. The bill establishes
9 additional unfair or discriminatory practices relating to wages
10 under Code section 216.6A. Penalty and remedial provisions
11 for discriminatory employment practices, including penalties
12 specific to wage discrimination, are applicable under Code
13 chapter 216 to violations of these requirements.

14

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

26

The bill prohibits an employer from seeking salary history
27 information from a potential employee as a condition of a job
28 interview or employment. This provision shall not be construed
29 to prohibit a prospective employer from asking a prospective
30 employee what salary level the prospective employee would
31 require in order to accept a job.

32

The bill prohibits an employer from releasing the salary
33 history of any current or former employee to any prospective
34 employer in response to a request as part of an interview or
35 hiring process without written authorization from such current

1 or former employee.

2 The bill prohibits an employer from publishing, listing, or
3 posting within the employer's organization, with any employment
4 agency, job-listing service, or internet site, or in any other
5 public manner, an advertisement to recruit candidates for
6 hire or independent contractors to fill a position within the
7 employer's organization without including the minimum rate of
8 pay of the position. The rate of pay shall include overtime
9 and allowances, if any, claimed as part of the minimum wage,
10 including but not limited to tipped wages. The bill prohibits
11 an employer from paying a newly hired employee at less than the
12 rate of pay advertised for the employee's position.

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

32 The bill provides that affirmative defenses to a claim under
33 Code section 216.6A are not applicable unless one or more of
34 the defenses account for the entire pay differential that is
35 the subject of the claim.

1 EQUAL PAY TASK FORCE. The bill creates an equal pay task
2 force to study the extent of discriminatory wage disparities
3 in the public and private sectors, the factors that cause
4 such disparities, the consequences of such disparities, and
5 actions likely to lead to the elimination and prevention of
6 such disparities.

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

11 The task force shall submit a report regarding its findings
12 and its recommendations regarding potential actions for the
13 elimination and prevention of discriminatory wage disparities
14 to the governor and the general assembly no later than December
15 29, 2023.