

By: Rodríguez

S.B. No. 160

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition on sex discrimination in employment compensation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 21, Labor Code, is amended by adding Section 21.1061 to read as follows:

Sec. 21.1061. SEX DISCRIMINATION IN COMPENSATION. For purposes of this chapter, a violation of Chapter 24 is considered to be discrimination on the basis of sex.

SECTION 2. Subtitle A, Title 2, Labor Code, is amended by adding Chapter 24 to read as follows:

CHAPTER 24. EMPLOYMENT DISCRIMINATION REGARDING COMPENSATION

Sec. 24.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who has made an oral or written application with an employer, or has sent a resume or other correspondence to an employer, indicating an interest in employment.

(2) "Commission" means the Texas Workforce Commission.

(3) "Employee" and "employer" have the meanings assigned by Section 21.002.

(4) "Wages" has the meaning assigned by Section 61.001.

Sec. 24.002. EMPLOYER INQUIRIES INTO AND CONSIDERATION OF

1 WAGE HISTORY INFORMATION. (a) An employer may not:

2 (1) include a question regarding an applicant's wage
3 history information on an employment application form;

4 (2) inquire into or consider an applicant's wage
5 history information; or

6 (3) obtain an applicant's wage history information
7 from a previous employer of the applicant, unless the wages in that
8 previous employment position are subject to disclosure under
9 Chapter 552, Government Code.

10 (b) Notwithstanding Subsection (a), an applicant may
11 provide written authorization to a prospective employer to confirm
12 the applicant's wage history, including benefits or other
13 compensation, only after the prospective employer has made a
14 written offer of employment to the applicant that includes the
15 applicant's wage and benefit information for the position.

16 Sec. 24.003. PROHIBITION AGAINST DISCRIMINATION IN WAGES.

17 (a) For purposes of this section, "business necessity" means an
18 overriding legitimate business purpose such that the factor relied
19 upon in determining wage differential effectively fulfills the
20 business purpose the factor is intended to serve.

21 (b) An employer commits an unlawful employment practice in
22 violation of this chapter and Chapter 21 if the employer
23 discriminates among employees on the basis of sex by paying wages to
24 an employee at a rate less than the rate at which the employer pays
25 wages to another employee of the opposite sex for the same or
26 substantially similar work on jobs, the performance of which
27 requires equal or substantially similar skill, effort, and

1 responsibility, and which are performed under similar working
2 conditions, except where the payment is made under one of the
3 following factors:

4 (1) a seniority system;

5 (2) a merit system;

6 (3) a system that measures earnings by quantity or
7 quality of production; or

8 (4) a differential based on a bona fide factor other
9 than sex.

10 (c) A seniority system described by Subsection (b)(1) may
11 not deduct from the employee's service time any leave that the
12 employee took under the Family and Medical Leave Act (29 U.S.C.
13 Section 2601 et seq.) or other applicable family or medical leave to
14 which the employee is entitled.

15 (d) The exception provided by Subsection (b)(4) applies
16 only if the employer demonstrates that the factor:

17 (1) is not based on or derived from a differential
18 based on sex in compensation;

19 (2) is related to the position in question; and

20 (3) is consistent with business necessity.

21 (e) An employer may not enter into an agreement with an
22 employee that provides that the employer may pay the employee a wage
23 at a rate that is in violation of this section.

24 Sec. 24.004. OTHER PROHIBITED ACTS. (a) An employer
25 commits an unlawful employment practice in violation of this
26 chapter and Chapter 21 if the employer:

27 (1) takes an adverse action or otherwise discriminates

1 against a person because the person has:

2 (A) opposed an act or practice made unlawful by
3 this chapter;

4 (B) sought to enforce rights protected under this
5 chapter; or

6 (C) testified, assisted, or participated in any
7 manner in an investigation, hearing, or other proceeding to enforce
8 this chapter; or

9 (2) discharges or in any other manner discriminates
10 against, coerces, intimidates, threatens, or interferes with an
11 employee or other person because the person:

12 (A) inquired about, disclosed, compared, or
13 otherwise discussed an employee's wages; or

14 (B) exercised or enjoyed, or aided or encouraged
15 another person to exercise or enjoy, any right granted or protected
16 by this chapter.

17 (b) This section does not require an employee to disclose
18 the employee's wages.

19 (c) An employer may prohibit a human resources employee
20 whose job responsibilities require access to the compensation
21 information of other employees from disclosing that information
22 without the written consent of the employee who is the subject of
23 the information. This subsection does not apply to compensation
24 information that is subject to disclosure under Chapter 552,
25 Government Code.

26 Sec. 24.005. NOTICE BY EMPLOYER REQUIRED. Each employer
27 shall post in conspicuous places on the premises of the employer

1 where notices to employees and applicants for employment are
2 customarily posted a notice, prepared or approved by the
3 commission, setting forth the pertinent provisions of this chapter
4 and information relating to the enforcement of this chapter.

5 Sec. 24.006. COMPLAINT; ENFORCEMENT. (a) A person
6 aggrieved by an unlawful employment practice under this chapter may
7 file a complaint with the commission. A complaint filed under this
8 section is subject to Subchapters E and F, Chapter 21.

9 (b) The commission shall enforce this chapter in accordance
10 with Chapter 21.

11 Sec. 24.007. EMPLOYER SELF-EVALUATION; AFFIRMATIVE
12 DEFENSE. (a) An employer is encouraged to periodically perform a
13 self-evaluation of the employer's business practices and
14 compensation to ensure that the employer is in compliance with this
15 chapter.

16 (b) In a civil action filed under Subchapter F, Chapter 21,
17 by a person aggrieved by an unlawful employment practice under this
18 chapter, it is an affirmative defense to liability for compensatory
19 or punitive damages under Section 21.2585 that:

20 (1) the employer performed a self-evaluation of the
21 employer's business practices and compensation in the three-year
22 period preceding the date of the conduct that is the basis of the
23 complaint; and

24 (2) the employer has in good faith demonstrated that,
25 following the date of the evaluation under Subdivision (1), the
26 employer has made reasonable progress toward eliminating
27 compensation differentials based on sex.

1 (c) This section does not require an employer to perform a
2 self-evaluation or subject an employer to any penalty for failing
3 to perform a self-evaluation.

4 Sec. 24.008. TASK FORCE. (a) The task force on wage
5 disparity is created and is composed of the following 15 members:

6 (1) the member of the commission who represents labor,
7 or the member's designee, to serve as presiding officer;

8 (2) the attorney general or the attorney general's
9 designee;

10 (3) three members of the house of representatives,
11 appointed by the speaker of the house of representatives;

12 (4) three members of the senate, appointed by the
13 lieutenant governor; and

14 (5) seven public members, appointed by the governor:

15 (A) one of whom represents employers;

16 (B) two of whom have experience in the field of
17 gender economics;

18 (C) one of whom represents organized labor; and

19 (D) three of whom represent women's advocacy
20 groups or associations.

21 (b) The task force shall investigate, analyze, and study the
22 factors, causes, and impact of wage disparity based on gender.

23 (c) Not later than January 1 of each odd-numbered year, the
24 task force shall submit to the legislature recommendations to
25 reduce wage disparity based on gender, including any proposed
26 legislation.

27 (d) Members of the task force serve without compensation and

1 may not be reimbursed for travel or other expenses incurred while
2 conducting the business of the task force.

3 (e) The commission shall provide administrative support to
4 the task force, including necessary staff and meeting facilities.

5 (f) The task force is abolished and this section expires
6 September 1, 2025.

7 SECTION 3. The changes in law made by this Act apply only to
8 an unlawful employment practice with regard to discrimination in
9 payment of compensation that occurs on or after January 1, 2020.

10 SECTION 4. This Act takes effect January 1, 2020.