

By: Sherman, Sr.

H.B. No. 360

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition on certain 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 and is enforceable under this chapter.

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:

(A) 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; and

(B) is not currently employed by that employer in any capacity.

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

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

1 (4) "Wages" has the meaning assigned by Section
2 61.001.

3 (5) "Wage history information" means information on an
4 applicant or employee's previous wages.

5 Sec. 24.002. EMPLOYER INQUIRY INTO AND CONSIDERATION OF
6 WAGE HISTORY INFORMATION. (a) An employer commits an unlawful
7 employment practice if the employer:

8 (1) includes a question regarding an applicant's wage
9 history information on an employment application form;

10 (2) inquires into an applicant's wage history
11 information;

12 (3) considers an applicant's wage history information
13 in determining:

14 (A) whether to hire the applicant; or

15 (B) the wages to be paid to the applicant; or

16 (4) obtains an applicant's wage history information
17 from a previous employer of the applicant or other source, unless
18 the wages in that previous employment position are subject to
19 disclosure under Chapter 552, Government Code.

20 (b) Notwithstanding Subsection (a)(3)(B), if an applicant
21 voluntarily discloses the applicant's wage history information to
22 an employer, the employer may consider that information in
23 determining the applicant's wages.

24 (c) This section does not prohibit an employer from asking
25 an applicant regarding the applicant's expectation of wages for the
26 prospective employment position.

27 Sec. 24.003. EMPLOYER PROVISION OF PAY SCALE. On

1 reasonable request following an initial interview, an employer
2 shall provide to an applicant a pay scale for the employment
3 position for which the applicant is applying.

4 Sec. 24.004. PROHIBITION AGAINST DISCRIMINATION IN WAGES.

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

9 (b) An employer commits an unlawful employment practice if
10 the employer discriminates among employees on the basis of sex by
11 paying wages to an employee at a rate less than the rate at which the
12 employer pays wages to another employee of the opposite sex for the
13 same or substantially similar work on jobs, the performance of
14 which requires equal or substantially similar skill, effort, and
15 responsibility, and which are performed under similar working
16 conditions, except where the payment is made under one of the
17 following factors:

18 (1) a seniority system;

19 (2) a merit system;

20 (3) a system that measures earnings by quantity or
21 quality of production; or

22 (4) a differential based on a bona fide factor other
23 than sex.

24 (c) The exception provided by Subsection (b)(4) applies
25 only if the employer demonstrates that the factor:

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

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

2 (3) is consistent with business necessity.

3 (d) An employer may not enter into an agreement with an
4 employee that provides that the employer may pay the employee a wage
5 at a rate that is in violation of this section.

6 (e) An employer may not justify a wage differential based on
7 wage history.

8 (f) An unlawful employment practice occurs each time:

9 (1) a discriminatory compensation decision or other
10 practice is adopted;

11 (2) an individual becomes subject to a discriminatory
12 compensation decision or other practice; or

13 (3) an individual is adversely affected by application
14 of a discriminatory compensation decision or other practice,
15 including each time wages affected wholly or partly by the decision
16 or other practice are paid.

17 Sec. 24.005. OTHER PROHIBITED ACTS. (a) An employer
18 commits an unlawful employment practice if the employer:

19 (1) takes an adverse action or otherwise discriminates
20 against a person because the person has:

21 (A) opposed an act or practice made unlawful by
22 this chapter;

23 (B) sought to enforce rights protected under this
24 chapter; or

25 (C) testified, assisted, or participated in any
26 manner in an investigation, hearing, or other proceeding to enforce
27 this chapter; or

1 (2) discharges or in any other manner discriminates
2 against, coerces, intimidates, threatens, or interferes with an
3 employee, applicant, or other person because the person:

4 (A) inquired about, disclosed, compared, or
5 otherwise discussed an employee's wages or an applicant's
6 prospective wages; or

7 (B) exercised or enjoyed, or aided or encouraged
8 another person to exercise or enjoy, any right granted or protected
9 by this chapter.

10 (b) This section does not require an employee to disclose
11 the employee's wages or an applicant to disclose the applicant's
12 prospective wages.

13 (c) An employer may prohibit a human resources employee
14 whose job responsibilities require access to the compensation
15 information of other employees from disclosing that information
16 without the written consent of the employee who is the subject of
17 the information. This subsection does not apply to compensation
18 information that is subject to disclosure under Chapter 552,
19 Government Code.

20 Sec. 24.006. EMPLOYER RECORDS. Each employer shall compile
21 and maintain for a period of at least three years records that
22 contain:

23 (1) the wages paid to each employee;

24 (2) the method, system, computations, and other
25 factors used to establish, adjust, and determine the wage rates
26 paid to the employee; and

27 (3) any other conditions of employment.

1 Sec. 24.007. COMPLAINT; ENFORCEMENT. (a) A person
2 aggrieved by an unlawful employment practice under this chapter may
3 file a complaint with the commission or file a civil action in the
4 manner prescribed by Chapter 21 for violations of that chapter.

5 (b) Liability may accrue, and an aggrieved person may obtain
6 relief as provided by Chapter 21, including recovery of back pay for
7 the period allowed under Section 21.258, if the unlawful employment
8 practices that have occurred during the period for filing a
9 complaint are similar or related to unlawful employment practices
10 with regard to discrimination in payment of compensation that
11 occurred outside the period for filing a complaint.

12 (c) The commission shall enforce this chapter in accordance
13 with Chapter 21.

14 SECTION 3. The changes in law made by this Act apply only to
15 an unlawful employment practice that occurs on or after January 1,
16 2022.

17 SECTION 4. This Act takes effect January 1, 2022.