

SECOND REGULAR SESSION

HOUSE BILL NO. 2403

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ARTHUR.

5590H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 290.400, 290.410, 290.440, and 290.450, RSMo, and to enact in lieu thereof three new sections relating to employment practices relating to gender.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 290.400, 290.410, 290.440, and 290.450, RSMo, are repealed and
2 three new sections enacted in lieu thereof, to be known as sections 290.400, 290.410, and
3 290.440, to read as follows:

290.400. As used in sections 290.400 to [290.450] **290.440** the following words have
2 the meanings indicated unless the context clearly requires otherwise:

3 (1) "Commission", the labor and industrial relations commission of Missouri;

4 (2) "Employee", every woman or man in receipt of or entitled to compensation for labor
5 performed for any employer;

6 (3) "Employer", every person, firm, corporation, agent, manager, representative,
7 contractor, subcontractor, principal or other person having control or direction of any woman or
8 man employed at any labor, or responsible directly or indirectly for the wages of another;

9 (4) ["Female", a woman of eighteen years or over;

10 (5)] "Wage rates" or "wages", [any compensation for labor measured by time, piece, or
11 otherwise] **all compensation in any form that an employer provides to employees in
12 payment for work done or services rendered including, but not limited to, base pay,
13 overtime bonuses, stock options, awards, tips, or various forms of nonmonetary
14 compensation if provided in lieu of or in addition to monetary compensation, provided that
15 such compensation has economic value to an employee.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

290.410. **1.** Notwithstanding any other provisions of the law, no employer shall pay any [female in his employ at] **employee** wage rates less than the wage rates paid to [male] employees [in the same establishment for the same quantity and quality of the same classification of work, provided that nothing herein shall prohibit a variation of rates of pay for male and female employees engaged in the same classification of work based upon a difference in seniority, length of service, ability, skill, difference in duties or services performed, difference in the shift or time of day worked, hours of work, or restrictions or prohibitions on lifting or moving objects in excess of specified weight, or other reasonable differentiation, or factors other than sex, when exercised in good faith] **of the opposite gender for comparable work, the performance of which requires equal skill, effort, and responsibility, and which is performed under similar working conditions.**

2. Notwithstanding the provisions of subsection 1 of this section, it shall not be unlawful for an employer to pay different wage rates to employees if such payments are made according to:

(1) A bona fide seniority or merit system;

(2) A system that measures earnings by quantity or quality of production;

(3) A bona fide factor other than gender, such as education, training, or experience.

This factor shall apply only if the employer demonstrates that the factor is not based on or derived from a gender-based differential in compensation, is job-related with respect to the position in question, and is consistent with business necessity. For purposes of this subdivision, "business necessity" means an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is claimed to serve. This defense shall not apply if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential; or

(4) Bona fide regional economic differentials.

3. An employer who is paying wages in violation of this section shall not, in order to comply with this section, reduce the wage of any employee.

4. No employer shall discharge, retaliate, take any adverse action, or otherwise discriminate against any individual because such individual has:

(1) Opposed any act or practice made unlawful by this section; or

(2) Testified, assisted, or participated in any manner in an investigation, hearing, or other proceeding to enforce this section.

5. No employer shall discharge, retaliate, take any adverse action, or otherwise discriminate against, coerce, intimidate, threaten, or interfere with any employee because such employee either inquired about, compared, or otherwise discussed the employee's

37 **wages or the wages of another employee; or exercised, enjoyed, aided, or encouraged any**
38 **other person to exercise or enjoy any right granted or protected by this section.**

290.440. 1. Any employer who violates section 290.410 is liable to the [female]
2 employee affected in the amount of the wages of which the [female] employee is deprived by
3 reason of the violation. **A court may also award such employee punitive damages.**

4 2. [Any female employee receiving less than the wage to which she is entitled under
5 sections 290.400 to 290.450 may recover in a civil action the balance of the wages, together with
6 the costs of suit, notwithstanding any agreement to work for a lesser wage.] **Any employer who**
7 **violates subsection 4 or 5 of section 290.410 is liable to any individual affected in the**
8 **amount of all wages and benefits lost as a result of the retaliation and, if awarded, an**
9 **additional amount of compensatory damages or an amount to be determined by a judge**
10 **or jury trial.**

11 3. [The burden of proof shall be upon the person bringing the claim to establish that the
12 differentiation in rate of pay is based upon the factor of sex and not upon other differences or
13 factors.] **In the event of a finding that an employer has violated section 290.410, a court**
14 **may enjoin such employer from future violations of section 290.410, and may order the**
15 **employer to take such additional steps as are necessary, including reclassification of**
16 **affected workers to ensure an end to the employer's gender-based pay practices or, if the**
17 **employer has engaged in unlawful retaliation prohibited herein, the court may order such**
18 **relief as to make the employee whole, including reinstatement.**

19 4. Any employee prevailing in a civil action brought under sections 290.400 to
20 290.440, in addition to the remedies set forth in this section, may also recover court costs
21 and reasonable attorney's fees, notwithstanding any agreement to work for a lesser wage.
22 **Any action brought under sections 290.400 to 290.440 shall be commenced within two years**
23 **after the alleged violation occurs or the date of the reasonable discovery of such violation.**

[290.450. Any action based upon or arising under sections 290.400 to
2 290.450 shall be instituted in the circuit court within six months after the date of
3 the alleged violation, but in no event shall any employer be liable for any pay due
4 under sections 290.400 to 290.450 for more than thirty days prior to receipt by
5 the employer of written notice of claim thereof from the female employee.]

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