AN ACT

To amend and reenact Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:661 through 669, relative to equal pay; to provide with respect to public policy; to provide for definitions; to further prohibit pay discrimination; to provide for a complaint procedure, penalties, attorney fees, and damages; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:661 through 669, is hereby amended and reenacted to read as follows:

CHAPTER 6-A. LOUISIANA EQUAL PAY FOR WOMEN ACT

§661. Short title; citation

This Chapter shall be known and may be cited as the "Louisiana Equal Pay for Women Act".

§662. Declaration of public policy

The public policy of this state is that a woman who performs public service for the state is entitled to be paid the same compensation for her service as is paid to a man who performs same kind, grade and quality of service, and all employees

Coding: Words which are struck through are deletions from existing law; words in boldface type and underscored are additions.
shall be compensated equally for work that is the same or equal in kind and

greater. No distinction in compensation may not be made because of sex.

§663. Definitions

As used in this Chapter, the following terms shall have the definitions

ascribed in this Section unless the context indicates otherwise:

(1) "Commission" means the Louisiana Commission on Human Rights.

(2) "Employee" means any female individual who is employed to work forty

or more hours a week and who is employed by the an employer.

(3) "Employer" means any department, office, division, agency, commission,

board, committee or other organizational unit of the state, any unit of local

government or political subdivision, or any individual, partnership,
corporation, association, business, trust, person, contractor, labor organization,
or entity for which fifty or more employees are employed within the state.

(4) "Unpaid wages" means the difference between the compensation

actually paid to an employee and the amount owed to the employee.

§664. Prohibited acts

A. No employer may discriminate against an employee on the basis of sex by

paying wages to an employee at a rate less than that paid within the same agency by

the same employer to another employee of a different sex for the same or

substantially similar work on jobs in which the employee's performance requires that

require equal skill, effort, education, and responsibility and that are performed under

similar involve the same or equal working conditions including time worked in the

position.

B. Nothing in Subsection A of this Section shall prohibit the payment of

different wage rates to employees when such payment is made pursuant to any of the

following:

(1) A seniority system.

(2) A merit system.

(3) A system that measures earnings by quantity or quality of production.
(4) A differential based on a bona fide factor other than sex and consistent with a business necessity, including but not limited to education, training, or experience, provided that both:

(a) The employer demonstrates that such factor is related to the job position in question.

(b) No alternative employment practice would serve the same legitimate business purpose without producing such a differential.

C. An employer who is paying wages in violation of this Chapter may not, in order to comply with this Chapter, reduce the wages of any other employee.

D. It shall be unlawful for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided under pursuant to this Chapter. It shall be unlawful for any employer to discriminate, retaliate, or take any adverse employment action, including but not limited to termination or in any other manner discriminate against any employee for inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, or aiding or encouraging any other employee to exercise his rights under pursuant to this Chapter.

E. It shall be unlawful for an employer subject to this Chapter to discriminate, retaliate, or take any adverse employment action, including but not limited to termination against an employee because, in exercising or attempting to exercise the employee's rights under pursuant to this Chapter, such the employee:

(1) Has filed any complaint or has instituted or caused to be instituted any proceeding to enforce the employee's rights under pursuant to this Chapter.

(2) Has provided or will provide any information in connection with any inquiry, hearing, or proceeding relating to any right afforded to an employee pursuant to this Chapter, regardless of whether the information is related to the employee's rights or the rights of another employee.

(3) Has testified or will testify in any inquiry, hearing, or proceeding relating to any right afforded to an employee pursuant to this Chapter, regardless of whether
the testimony is related to the employee's rights or the rights of another employee.

F. An employee's agreement to work at a rate of compensation that is less than the rate to which the employee is entitled may not be used as a defense by the employer in any action against him brought pursuant to this Chapter unless an employee negotiated the lesser compensation for specific accommodations.

G. The provisions of this Chapter shall be construed to prohibit discrimination in pay regardless of whether the differential in pay is intentional or unintentional.

§665. Complaint procedure

A. An employee who in good faith believes that her employer is in violation of this Chapter shall submit written notice of the alleged violation to the employer. An employer who receives such written notice from an employee shall have sixty days from receipt of the notice to investigate the matter and remedy any violation of this Chapter discriminatory differential in pay. If the employer remedies the violation in a manner that complies with the statute and does so within the time provided herein in this Subsection, the employee may not bring any action against or seek unpaid wages from the employer pursuant to this Chapter except as provided in Subsections B and C of this Section regarding the remedied complaint.

B. If the employer fails to resolve the dispute to the satisfaction of the employee within the time provided herein allotted sixty days, the employee may file a complaint with the commission requesting an investigation of the complaint pursuant to this Chapter, Chapter 3-A of this Title, or R.S. 51:2257.

C. If the commission finds evidence of discriminatory, retaliatory or other adverse employment action on the part of the employer in violation of this Chapter but is unable to resolve or mediate the dispute, or fails to render a decision as to regarding the dispute within one hundred eighty days from the filing of the
complaint, or issues a finding of no discrimination on the part of the employer, the employee may institute a civil suit in the Nineteenth Judicial District Court of competent jurisdiction. In no event shall a civil suit be instituted prior to the expiration of one hundred eighty days from the filing of the complaint with the commission.

§666. Damages

A. (1) An employer who violates is found to have violated the provisions of this Chapter shall be liable to the affected employees in the amount of the employee’s unpaid wages and reasonable attorney fees and costs interest. The award for unpaid wages shall not exceed the payment of unpaid wages for thirty-six months.

(2) The prevailing party shall be awarded reasonable attorney fees.

(3) In addition to the damages provided for in this Subsection, the court may award the employee up to the amount of any unpaid wages, reinstatement of employment, promotion, or compensation for lost benefits.

B. The award of monetary relief beyond attorney fees shall be limited to those violations which have occurred within a thirty-six-month period prior to the employee’s written notice to the employer, as required in R.S. 23:665(A).

C. In cases where suit is filed in the district court, no monetary relief may be awarded the employee for losses incurred between the date that the district court rendered its final judgment and the date upon which all appeals of that judgment have been exhausted.

D. Interim earnings by the employee discriminated against shall operate to reduce the monetary relief otherwise allowable under pursuant to this Chapter.

E. D. Nothing in this Chapter prevents the voluntary settlement of a claim by agreement of between the employer and the employee for a lesser amount than the employee alleges the employee is due.

F. E. An employee found by a the court to have brought a frivolous claim under pursuant to this Chapter shall be held liable to the employer or any agent of
the employer who was named a defendant in the suit, or both, for reasonable
damages, reasonable attorney fees, and court costs incurred as a result of the claim.

§667. Limitation of actions

A. Any action filed in the Nineteenth Judicial District Court must be commenced within one year of the date that an employee is aware or should have been aware that the employee's employer is in violation of this Chapter.

B. The one-year prescriptive period shall be suspended during the sixty-day period allowed to the employer by this Chapter to respond to the employee's written notice, during the pendency of any administrative review or investigation of the employee's claim by the Louisiana Commission on Human Rights or the United States Equal Employment Opportunity Commission, or both.

§668. Records to be kept by employers

A. Every employer subject to this Chapter shall create and preserve records reflecting the name, sex, address, and position of each employee, and all wages paid to each employee. These records shall be preserved for a period of not less than three years from the employee's last date of employment with the employer.

B. (1) Any records created, preserved, or obtained pursuant to this Chapter shall be confidential and privileged, and shall not be subject to disclosure under the Public Records Law when in the custody or control of the commission.

(2) Any records created, preserved, or obtained pursuant to this Chapter shall be confidential. The employer may seek a protective order and an in camera inspection by the court of competent jurisdiction of such records prior to any public disclosure.

§669. Supplemental application

A. This Chapter is supplemental and is not intended to supercede any provision supplement those remedies related to sex discrimination provided for.
in Chapter 3-A of this Title, the "Louisiana Employment Discrimination Act Law", which prohibits discrimination based upon sex regardless of whether the employer is a state entity, a private business, or other employer.

B. Nothing in this Chapter is intended to provide any additional remedies or causes of action for any other category of employment discrimination provided for in Chapter 3-A of this Title.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 2 Original 2017 Regular Session Morrell

Present law provides that women working as employees of the state of Louisiana shall be entitled to the same compensation as men employed by the state of Louisiana.

Proposed law retains present law but extends present law to cover men as well as women.

Proposed law retains present law but extends present law to cover local government employees and private sector employees.

Present law defines "employee" as a woman who works 40 or more hours a week.

Proposed law changes the definition of "employee" to mean any person who performs work for compensation.

Present law defines "employer" as an organizational unit of state government.

Proposed law extends the definition of "employer" from an organizational unit of the state to all employers that employ 50 or more persons.

Present law prohibits an employer from paying wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work within the same state agency.

Proposed law removes the specific reference to "within the same agency" and further provides that the work performed that is eligible for equal pay may be the same or equal to the work done by another employee.

Present law allows exceptions for pay differences in instances in which pay is made under a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a difference based on a factor other than sex so long as the system is job related or furthers a legitimate business purpose.

Proposed law retains present law but allows for an exception in differences in pay if the difference is based on a factor other than sex and is consistent with a business necessity.

Proposed law removes the provision in present law authorizing an exception if no alternative employment practice would serve the same legitimate business purpose without producing such pay difference.

Proposed law disallows discrimination based on sex regardless of whether the discrimination
is intentional or unintentional.

Present law prohibits an employer from interfering with, restraining, or denying the exercise of, or attempted exercise of, an employee's right to equal pay and the employee's right to object and bring action to remedy the discrimination.

Proposed law retains present law but clarifies that an employer is prohibited from retaliating against an employee for providing information or testimony for a fellow employee to pursue his rights under the law.

Proposed law provides that an employee's agreement to work at a rate of compensation that is less than the rate to which such employee is entitled may not be used as a defense by the employer in any action against him brought pursuant to proposed law unless such employee negotiated the lesser compensation for specific accommodations.

Present law sets forth a complaint procedure for suspected violations of present law. Present law provides that any employee who believes that his employer is discriminating in compensation may provide written notice to the employer of the violation. Present law provides that, upon receiving the notice, the employer is allowed 60 days to remedy the violation.

Proposed law retains present law and prohibits any employee from seeking unpaid wages from an employer if such employer has remedied the discriminatory differential in pay.

Present law provides that if the employer does not remedy the pay differential within the allotted 60 days, the employee may bring an action against the employer with the Human Rights Commission pursuant to present law.

Proposed law retains present law and in addition to the complaint procedure set forth in present law (R.S. 51:2257) also allows for the use of the complaint procedure set forth in present law (Chapter 3-A of Title 23) regarding discrimination in employment.

Present law provides that if the commission finds evidence of discriminatory action on the part of the employer but fails to resolve the dispute, or fails to render a decision on the dispute, the employee may institute a civil suit in district court.

Proposed law retains present law and limits the time period the commission is allowed to decide on the dispute to 180 days from the filing of the complaint.

Present law requires that suits be brought in the 19th JDC (East Baton Rouge Parish).

Proposed law changes jurisdiction and venue of suits from the 19th JDC to a district court of competent jurisdiction. Prohibits any employee from filing a civil suit prior to the expiration of 180 days from the filing of the complaint with the commission.

Present law requires the court to award damages in the amount of unpaid wages, attorney fees, and costs if a discriminatory difference in pay is found.

Proposed law requires the employer to be liable for unpaid wages and interest. Further requires the award for unpaid wages not to exceed the payment of such unpaid wages for 36 months. Requires the prevailing party to be awarded reasonable attorney fees. Authorizes the court to reinstate employment, grant a promotion, or compensate the employee for lost benefits.

Present law limits monetary relief for a violation of the law to a 36-month period prior to the employee's written notice. Provides that monetary relief cannot be awarded for losses incurred between the time of the district court's final decision and the final determination of an appellate court.
Proposed law deletes present law and allows monetary relief beyond attorney fees to be awarded for losses incurred between the time of the district court's final decision and the final determination of an appellate court.

Present law allows an employee and his employer to come to an agreement to settle the claim for an amount less than the amount the employee believes he is owed.

Proposed law retains present law and clarifies that the agreement be voluntary.

Present law requires employers to make and preserve records that document names, addresses, positions, and wages of each employee and requires that the records be preserved for at least three years from the last date of employment.

Proposed law retains present law but further requires the sex of each employee be recorded and retained.

Proposed law requires any records created, preserved, or obtained to be confidential and privileged, and not subject to disclosure under the Public Records Law when in the custody or control of the commission. Authorizes the employer to seek a protective order and an in camera inspection by the court of competent jurisdiction of such records prior to any public disclosure.

Present law provides that present law is supplemental and is not intended to supercede any provision of the present law "Louisiana Employment Discrimination Law", which prohibits intentional discrimination based upon sex regardless of whether the employer is a state entity, a private business, or other employer.

Proposed law provides that nothing in present law is intended to provide any additional remedies or causes of action for any other category of employment discrimination.

Effective August 1, 2017.

(Amends R.S. 23:661-669)