**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA EQUAL PAY FOR EQUAL WORK ACT”, BY ADDING CHAPTER 12 TO TITLE 41 SO AS TO PROHIBIT ON THE BASIS OF SEX THE PAYING OF WAGES TO EMPLOYEES OF ONE SEX AT A LESSER RATE THAN THE RATE PAID TO EMPLOYEES OF THE OPPOSITE SEX FOR COMPARABLE WORK IN JOBS WHICH REQUIRE THE SAME OR ESSENTIALLY THE SAME KNOWLEDGE, SKILL, EFFORT, AND RESPONSIBILITY; TO PROVIDE DEFINITIONS, EXCEPTIONS, AND PROHIBIT SPECIFIC EMPLOYER ACTIONS WITH REGARD TO THESE REQUIREMENTS; AND TO PROVIDE ADMINISTRATIVE AND, WHERE APPLICABLE, JUDICIAL REMEDIES FOR VIOLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act is known and may be cited as the “South Carolina Equal Pay for Equal Work Act”.

SECTION 2. Title 41 of the 1976 Code is amended by adding:

“CHAPTER 12

Equal Pay for Equal Work

Section 41‑12‑10. The General Assembly declares that the practice of discriminating on the basis of sex by paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work in jobs which require the same, or essentially the same, knowledge, skill, effort, and responsibility unjustly discriminates against the person receiving the lesser rate, leads to low worker morale, high turnover, and frequent labor unrest, discourages workers paid at the lesser wage rates from training for higher level jobs, curtails employment opportunities, decreases mobility of workers and increases labor costs, impairs purchasing power and threatens the maintenance of an adequate standard of living by the workers and their families, prevents optimum utilization of the labor resources available to the state, threatens the well‑being of citizens of this State, and adversely affects the general welfare. It is therefore declared to be the public policy of the State of South Carolina through its police power to eliminate, as rapidly as possible, discriminatory wage practices based on sex.

Section 41‑12‑20. As used in this chapter, the term:

(1) ‘Commissioner’ means the Commissioner of Labor of the State of South Carolina.

(2) ‘Employ’ means to permit to work.

(3) ‘Employee’ means any individual employed by an employer, other than domestic or agricultural employees, and includes individuals employed by the State or any of its political subdivisions, including public bodies.

(4) ‘Employer’ means any person employing ten or more employees and acting directly or indirectly in the interest of an employer in relation to an employee. The term ‘employer’, as used in this chapter, means an employer who is doing business in the State of South Carolina, in regard to its employees located in this State.

(5) ‘Occupation’ means any industry, trade, business or branch of it, or any employment or class of employment.

(6) ‘Wage’ or ‘wage rate’ means all compensation for employment, including payment in kind and amounts paid by employers for employee benefits.

Section 41‑12‑30. (A) An employer having employees subject to any provisions of this chapter may not discriminate, within the establishment in which the employees are employed, between employees on the basis of sex by paying wages to employees in the establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex in the establishment for equal work in jobs which require equal skill, effort, and responsibility, and which are performed under similar working conditions, except where payment is made pursuant to:

(1) a seniority system;

(2) a merit system;

(3) a system which measures earnings by quantity or quality of production; or

(4) a differential based on any factor other than sex.

(B) An employer who is paying a wage rate differential in violation of this section in order to comply with this section, shall not reduce the wage rate of any employee.

Section 41‑12‑40. An employer may not interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided under this chapter. An employer may not 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 rights pursuant to this chapter.

Section 41‑12‑50. An employer subject to this chapter may not 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 this chapter, the employee has:

(1) filed any complaint or has instituted or caused to be instituted any proceeding to enforce the employee’s rights under this chapter;

(2) provided or will provide any information in connection with any inquiry or proceeding relating to any right afforded to an employee pursuant to this chapter; or

(3) testified or will testify in any inquiry or proceeding relating to any right afforded to an employee pursuant to this chapter.

Section 41‑12‑60. (A) An employee who in good faith believes that the employee’s employer is in violation of this chapter shall submit written notice of the alleged violation to the employer. An employer who receives the written notice from an employee has sixty days from receipt of the notice to investigate the matter and remedy any violation of this chapter. If an employer remedies the violation in a manner that complies with this chapter and within the time provided in this chapter, the employee may not bring any action against the employer pursuant to this chapter except as provided in subsections (B) and (C).

(B) If an employer fails to resolve the dispute to the satisfaction of the employee within the time provided, the employee may file a complaint with the commissioner requesting an investigation of the complaint.

(C) If the commissioner 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 the dispute, or issues a finding of no discrimination on the part of the employer, the employee may institute a civil suit in the court of common pleas.

Section 41‑12‑70. (A) Any case appealed to the court of common pleas pursuant to this chapter must be heard de novo, and except in a finding of a violation of Section 41‑12‑40 or 41‑12‑50, or both sections, the employer is liable to the affected employee in the amount of the employee’s unpaid wages, interest at the legal rate, and reasonable attorney’s fees.

(B) If in the court of common pleas there is a finding of the employer’s violating Section 41‑12‑40 or 41‑12‑50, or both sections, then the employer is liable for compensatory and other damages, including punitive damages, limited to those specific violations.

Section 41‑12‑80. Nothing in this chapter prevents the settlement of a claim by agreement of the employer and employee for a lesser amount than the employee alleges the employee is due.

Section 41‑12‑90. (A) An action for inadequate wages or any other form of relief for a violation of this chapter 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) This one‑year prescriptive period is suspended during the sixty‑day period allowed the employer pursuant to this chapter to respond to the employee’s written notice, or during the pendency of any administrative review or investigation of the employee’s claim by the commissioner or the United States Department of Labor, or both.

Section 41‑12‑100. (A) The commissioner shall have the power and it shall be his duty to carry out this chapter; and for this purpose the commissioner or his authorized representative shall have the power to:

(1) assist any employer to ensure that all employees are receiving comparable pay for comparable work in jobs which require comparable skill, effort, and responsibility;

(2) assist any employer so that the character of the work and operations on which persons are employed can be compared, to question the persons, and to obtain other information as is reasonably necessary for the administration and enforcement of this chapter; and

(3) eliminate pay practices unlawful under this chapter by informal methods of conference, conciliation, and persuasion.

(B) The commissioner is authorized to request witnesses to appear and to produce pertinent records for examination by the commissioner or his authorized representative in the county of the place of business of the employer. In the event of failure of a person to attend, testify, or produce records voluntarily, the commissioner may make application to the court of common pleas of the county in which the business is located and, after notice and hearing, the court, in its discretion and upon proper cause shown, may issue an order requiring the person to appear before the commissioner or his authorized representative and testify or produce records as requested by the commissioner.

(C) The commissioner shall have the authority to promulgate those regulations appropriate to the carrying out of this chapter.

Section 41‑12‑110. Every employer subject to this chapter shall keep an abstract or copy of this chapter posted in a conspicuous place in or about the premises where any employee is employed.

Section 41‑12‑120. This chapter is supplemental and is not intended to supersede any other cause of action or remedy available to an employee under state or federal law.”

SECTION 2. This act takes effect July 1, 2019, and applies for complaints for wage discrimination occurring after June 30, 2019.

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