

ASSEMBLY BILL NO. 124—ASSEMBLYMEN DURAN, WATTS, TORRES; ANDERSON, BENITEZ-THOMPSON, BILBRAY-AXELROD, BROWN-MAY, CARLTON, CONSIDINE, GORELOW, MARTINEZ, MARZOLA, BRITTNEY MILLER, MONROE-MORENO, NGUYEN, PETERS AND THOMAS

FEBRUARY 15, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to employment. (BDR 53-169)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to employment; prohibiting employers from discriminating against employees on the basis of sex by taking certain actions relating to the employment opportunities of an employee; prohibiting an employer from seeking or taking certain other actions relating to the wage rate history of a prospective employee; requiring an employer to disclose the minimum wage rate, wage scale or salary range for a position of employment under certain circumstances; providing remedies and administrative penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law prohibits an employer from discriminating between employees on
2 the basis of sex by paying lower wages to an employee than the wages paid to an
3 employee of the opposite sex for equal work performed under similar working
4 conditions. (NRS 608.017) **Section 1** of this bill further prohibits an employer from
5 discriminating between employees by: (1) assigning or directing an employee into a
6 less favorable position or career track based on the sex of the employee; (2) failing
7 to provide certain information relating to promotions or advancement based on the
8 sex of the employee; or (3) limiting or depriving an employee of an employment
9 opportunity that would otherwise be available if not for the sex of the employee.
10 Existing law requires the Labor Commissioner to prosecute violations of these
11 provisions. (NRS 608.180) Existing law makes such a violation a misdemeanor and



authorizes the Labor Commissioner to impose an administrative penalty of not more than \$5,000 per violation. (NRS 608.195)

Existing law establishes various unlawful employment practices. (Chapter 613 of NRS) **Section 7** of this bill prohibits a public or private employer from seeking the wage rate history of a prospective employee or relying upon the wage history of a prospective employee to determine the wage rate the prospective employee will be paid. **Section 7** also prohibits such an employer from taking certain employment actions based on the refusal of a prospective employee to disclose his or her wage rate history.

Section 8 of this bill requires a public or private employer to, upon the request of a prospective employee who has completed an interview for a position of employment, disclose to the prospective employee the minimum wage rate for the position. **Section 8** further requires such an employer to disclose the salary range, wage scale or, if such a range or scale is not available, the minimum wage rate for a position of employment to an employee who has completed an interview for or been offered a promotion or transfer to the position.

Section 9 of this bill establishes the civil remedies available to a person affected by a violation of the provisions of **section 7 or 8** committed by an employer, including employment of a prospective employee, reinstatement or promotion of an employee, payment of lost wages and benefits and the award of reasonable costs and attorney's fees. **Section 10** of this bill authorizes the Labor Commissioner to impose an administrative penalty against an employer for each violation of **section 7 or 8** and to bring a civil action against the employer.

Sections 4-6 of this bill define words and terms applicable to the provisions of **sections 3-10** of this bill.

WHEREAS, Despite existing federal, state and local laws and regulations prohibiting wage discrimination, women continue to earn less, on average, than men; and

WHEREAS, According to data from the Bureau of the Census of the United States Department of Commerce, women in 2018 earned an average of 81.6 cents for every dollar earned by a man; and

WHEREAS, In recent years, numerous states have enacted laws prohibiting an employer from seeking the wage history of a prospective employee in an effort to reduce the gender wage gap; and

WHEREAS, Recent research indicates that laws which prohibit an employer from seeking the wage history of a prospective employee have been effective in helping to reduce the gender wage gap; and

WHEREAS, The State has a substantial interest in remedying wage discrimination and promoting wage equality; and



WHEREAS, Prohibiting an employer from seeking the wage history of a prospective employee is an effective step toward closing the gender wage gap; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 608.017 is hereby amended to read as follows: 608.017 1. It is unlawful for any employer to discriminate between employees, employed within the same establishment, on the basis of sex by ~~paying~~:

(a) *Paying* lower wages to one employee than the wages paid to an employee of the opposite sex who performs equal work which requires equal skill, effort and responsibility and which is performed under similar working conditions ~~and~~;

(b) *Assigning or directing an employee into a less favorable position based on the sex of the employee;*

(c) *If the employer offers career tracks, assigning or directing an employee into a less favorable career track based on the sex of the employee;*

(d) *Failing to provide to an employee information about promotions or, if applicable, advancement in the full range of career tracks offered by the employer based on the sex of the employee; or*

(e) *Limiting or depriving an employee of an employment opportunity that would otherwise be available to the employee but for the sex of the employee.*

2. The provisions of *paragraph (a) of* subsection 1 do not apply where wages are paid pursuant to:

(a) A seniority system;

(b) A merit system;

(c) A compensation system under which wages are determined by the quality or quantity of production; or

(d) A wage differential based on factors other than sex.

3. An employer who violates the provisions of ~~this section~~ *paragraph (a) of subsection 1* shall not reduce the wages of any employees in order to comply with such provisions.

Sec. 2. Chapter 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 10, inclusive, of this act.

Sec. 3. *As used in sections 3 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4, 5 and 6 of this act have the meanings ascribed to them in those sections.*



1 **Sec. 4.** *"Employer" means a public or private employer in*
2 *this State, including, without limitation, the State of Nevada, an*
3 *agency of this State and a political subdivision of this State.*

4 **Sec. 5.** *"Wage rate" means:*

5 1. *For an employee paid on an hourly basis, the hourly*
6 *compensation paid to the employee and the value per hour of all*
7 *other compensation and benefits received by the employee from*
8 *the employer.*

9 2. *For an employee paid on a salary basis, the total*
10 *compensation and benefits received by the employee from the*
11 *employer.*

12 **Sec. 6.** *"Wage rate history" means the wage rate paid to a*
13 *prospective employee for any current or former position of*
14 *employment.*

15 **Sec. 7.** *It is unlawful for an employer to:*

16 1. *Seek the wage rate history of a prospective employee;*

17 2. *Rely upon the wage rate history of a prospective employee*
18 *to determine the wage rate the prospective employee will be paid;*

19 3. *Discriminate or retaliate against in any manner, deny*
20 *employment to or threaten to take such action against a*
21 *prospective employee who refuses, declines or fails to disclose his*
22 *or her wage rate history; or*

23 4. *Discharge, discipline, discriminate or retaliate against in*
24 *any manner, deny employment or promotion to or threaten to take*
25 *such action against an employee or prospective employee who has:*

26 (a) *Filed any complaint or instituted or caused to be instituted*
27 *any legal proceeding pursuant to sections 3 to 10, inclusive, of this*
28 *act;*

29 (b) *Testified or may testify in any legal proceeding instituted*
30 *pursuant to sections 3 to 10, inclusive, of this act; or*

31 (c) *Exercised his or her rights, or exercised on behalf of*
32 *another person the rights afforded him or her pursuant to sections*
33 *3 to 10, inclusive, of this act.*

34 **Sec. 8.** *An employer shall:*

35 1. *Upon the request of a prospective employee who has*
36 *completed an interview for a position of employment, disclose to*
37 *the prospective employee the minimum wage rate for the position;*
38 *and*

39 2. *Upon the request of an employee who has completed an*
40 *interview for or, if an interview was not required, has been offered*
41 *a promotion or transfer to a new position of employment, disclose*
42 *to the employee:*

43 (a) *The wage scale or salary range for the position; or*

44 (b) *If a wage scale or salary range for the position is not*
45 *available, the minimum wage rate for the position.*



Sec. 9. 1. *An employer who violates the provisions of sections 3 to 10, inclusive, of this act is liable to the employee or prospective employee affected by the violation. The employer is liable for any legal or equitable relief as may be appropriate, including, without limitation, employment of the prospective employee or reinstatement or promotion of the employee, as applicable, and the payment of lost wages and benefits.*

2. *An action to recover the liability pursuant to subsection 1 may be maintained against the employer by an employee or prospective employee:*

(a) For or on behalf of the employee or prospective employee; and

(b) On behalf of other employees or prospective employees similarly situated.

➤ An action must not be commenced pursuant to this section more than 3 years after the date of the alleged violation.

3. *In any action brought pursuant to this section, the court, in its discretion, may allow the prevailing party reasonable costs, including attorney's fees.*

Sec. 10. 1. *If any person violates sections 3 to 10, inclusive, of this act, the Labor Commissioner may impose against the person an administrative penalty of not more than \$5,000 for each such violation.*

2. *In determining the amount of any administrative penalty to be imposed against the person, the Labor Commissioner shall consider the previous record of the person in terms of compliance with sections 3 to 10, inclusive, of this act and the severity of the violation. Any administrative penalty imposed against the person is in addition to any other remedy or penalty provided pursuant to sections 3 to 10, inclusive, of this act.*

3. *The Labor Commissioner may bring a civil action pursuant to this section to restrain violations of sections 3 to 10, inclusive, of this act. A court of competent jurisdiction may issue, without bond, a temporary or permanent restraining order or injunction to require compliance with sections 3 to 10, inclusive, of this act, including any legal or equitable relief incident thereto as may be appropriate, such as, without limitation, employment of a prospective employee, reinstatement or promotion of an employee and the payment of lost wages and benefits.*

