

HOUSE LABOR AND HUMAN RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 216

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE FAIR PAY FOR WOMEN ACT;
PROHIBITING WAGE DISCRIMINATION BASED ON AN EMPLOYEE'S SEX;
PROHIBITING RETALIATION FOR ASSERTING A CLAIM PURSUANT TO THE
FAIR PAY FOR WOMEN ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the
"Fair Pay For Women Act".

SECTION 2. DEFINITIONS.--As used in the Fair Pay for
Women Act:

- A. "commission" means the human rights commission;
- B. "director" means the chief of the human rights
bureau of the labor relations division of the workforce
solutions department;
- C. "employ" means suffer or permit to work;

.191944.4

underscoring material = new
[bracketed material] = delete

1 D. "employee" means any individual employed by an
2 employer;

3 E. "employer" means a person employing four or more
4 employees and any person acting for an employer;

5 F. "unpaid wage" means the difference between the
6 wages paid to the employee and the wages that would have been
7 paid to the employee had the discrimination not occurred; and

8 G. "wage" means compensation for performance of
9 services by an employee for an employer whether paid by the
10 employer or another person, including cash value of all
11 compensation paid in any medium other than cash.

12 SECTION 3. PROHIBITION ON PAYING EMPLOYEES LESS FOR SAME
13 WORK.--

14 A. No employer shall discriminate, within any
15 establishment in which such employees are employed, between
16 employees on the basis of sex by paying wages to employees in
17 the establishment at a rate less than the rate that the
18 employer pays wages to employees of the opposite sex in the
19 establishment for equal work on jobs the performance of which
20 requires equal skill, effort and responsibility and that are
21 performed under similar working conditions, except where the
22 payment is made pursuant to a:

23 (1) seniority system;

24 (2) merit system; or

25 (3) system that measures earnings by quantity

1 or quality of production.

2 B. An employer shall not reduce the wage of an
3 employee to comply with this section.

4 C. No agreement between an employer and an employee
5 for a specific wage in violation of the Fair Pay for Women Act
6 shall prevent the employee from raising a claim based on a
7 violation of the Fair Pay for Women Act.

8 SECTION 4. GRIEVANCE PROCEDURE.--

9 A. A person claiming to be aggrieved by an unlawful
10 discriminatory practice in violation of the Fair Pay for Women
11 Act may:

12 (1) maintain an action to establish liability
13 and recover damages in any court of competent jurisdiction by
14 any one or more employees for and on behalf of the employee or
15 employees and for other employees similarly situated, or such
16 employee or employees may designate an agent or representative
17 to maintain such action on behalf of all employees similarly
18 situated; or

19 (2) seek relief under the Human Rights Act
20 pursuant to the process set out in Sections 28-1-10 through
21 28-1-13 NMSA 1978.

22 B. The court in any action brought under this
23 section shall, in addition to any judgment awarded to the
24 plaintiff or plaintiffs, allow costs of the action and
25 reasonable attorney fees to be paid by the defendant. In any

.191944.4

1 proceedings brought pursuant to the provisions of this section,
2 the employee shall not be required to pay any filing fee or
3 other court costs necessarily incurred in such proceedings.

4 C. The court in any action brought under this
5 section may order appropriate injunctive relief, including
6 requiring an employer to post in the place of business a notice
7 describing violations by the employer as found by the court or
8 a copy of a cease and desist order applicable to the employer.

9 D. An action arising under the Fair Pay for Women
10 Act shall be initiated within six years from the date of the
11 discovery of the violation.

12 E. A person claiming to be aggrieved by an unlawful
13 discriminatory practice in violation of the Fair Pay for Women
14 Act need not exhaust administrative remedies.

15 F. The initiation of an administrative process
16 under the Human Rights Act pursuant to the process set out in
17 Sections 28-1-10 through 28-1-13 NMSA 1978 shall toll the
18 statute of limitations for initiating a claim under the Fair
19 Pay for Women Act.

20 **SECTION 5. RETALIATION PROHIBITED.**--It is a violation of
21 the Fair Pay for Women Act for an employer or any other person
22 to discharge, demote, deny promotion to or in any other way
23 discriminate against an employee in the terms or conditions of
24 employment in retaliation for the person asserting a claim or
25 right pursuant to the Fair Pay for Women Act or assisting

.191944.4

1 another person to do so, or for informing another person about
2 employment rights or other rights provided by law.

3 SECTION 6. ENFORCEMENT--PENALTIES--REMEDIES.--

4 A. An employer who violates a provision of the Fair
5 Pay for Women Act shall be liable to the affected employee for
6 damages and equitable relief, including employment,
7 reinstatement and promotion. Damages shall be calculated on
8 the basis of:

9 (1) the affected employee's unpaid wages and
10 the damages from retaliation; and

11 (2) all other actual damages.

12 B. An employer who violates a provision of the Fair
13 Pay for Women Act may also be liable to the employee for:

14 (1) treble damages; or

15 (2) punitive damages.

16 C. Recovery of unpaid wages is limited to six years
17 prior to the date of the last violation of the Fair Pay for
18 Women Act.