**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 12 TO CHAPTER 11, TITLE 8 ENACTING THE “SOUTH CAROLINA STATE EMPLOYEE EQUAL PAY FOR EQUAL WORK ACT” SO AS TO PROHIBIT DISCRIMINATION BY GENDER REGARDLESS OF GENDER IN COMPENSATION PAID STATE EMPLOYEES FOR SAME KIND, GRADE, AND QUALITY OF STATE EMPLOYMENT, TO PROVIDE DEFINITIONS, EXCEPTIONS, AND PROHIBIT SPECIFIC EMPLOYER ACTIONS WITH REGARD TO THE ENFORCEMENT OF THIS ACT, 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. Chapter 11, Title 8 of the 1976 Code is amended by adding:

“Article 12

South Carolina State Employee Equal Pay

for Equal Work

Section 8‑11‑1310. This article may be cited as the ‘South Carolina State Employee Equal Pay for Equal Work Act’.

Section 8‑11‑1320. It is the public policy of this State that an employee who performs public service for the State regardless of gender is entitled to be paid the same compensation for that service, as is paid to another who performs the same kind, grade and quality of service, and a distinction in compensation may not be made because of gender.

Section 8‑11‑1330. As used in this article:

(1) ‘Commission’ means the South Carolina Human Affairs Commission.

(2) ‘Employee’ means an individual who is employed to work forty or more hours a week and who is employed by the employer.

(3) ‘Employer’ means any department, office, division, agency, commission, board, committee, institution, or other organizational unit of this State.

Section 8‑11‑1340. (A) An employer may not discriminate against an employee on the basis of gender by paying wages to an employee at a rate less than that paid within the same agency to another employee of a different gender for the same or substantially similar work on jobs in which the employee’s performance requires equal skill, effort, education, and responsibility and that are performed under similar working conditions, including time worked in the position.

(B) Nothing in subsection (A) prohibits the payment of different wage rates to employees when the 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; or

(4) a differential based on a bona fide factor other than gender including, but not limited to, education, training, or experience, if both:

(a) the employer demonstrates this factor is related to the job position in question; and

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

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

Section 8‑11‑1350. It is unlawful for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided under this article. It is 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 rights pursuant to this article.

Section 8‑11‑1360. It is unlawful for an employer subject to this article 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 this article, the employee:

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

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

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

Section 8‑11‑1370. (A) An employee who in good faith believes that the employee’s employer is in violation of this article 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 article. If an employer remedies the violation in a manner that complies with this article and within the time provided in this article, the employee may not bring any action against the employer pursuant to this article 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 commission requesting an investigation of the complaint.

(C) If the commission finds evidence of discriminatory, retaliatory, or other adverse employment action on the part of the employer in violation of this article but is unable to resolve or mediate the dispute using the procedures and remedies provided pursuant to Section 1‑13‑90, 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 8‑11‑1380. (A) Any case appealed to the court of common pleas pursuant to this article must be heard de novo, and except in a finding of a violation of Section 8‑11‑1350 or 8‑11‑1360, or both such 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 8‑11‑1350 or 8‑11‑1360, or both such sections, then the employer is liable for compensatory and other damages, including punitive damages, limited to those specific violations.

Section 8‑11‑1390. Nothing in this article 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 8‑11‑1400. (A) An action for unpaid wages or any other form of relief for a violation of this article 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 article.

(B) This one‑year prescriptive period is suspended during the sixty‑day period allowed the employer pursuant to this article to respond to the employee’s written notice, during the pendency of any administrative review or investigation of the employee’s claim by the commission or the United States Department of Labor, or both.

Section 8‑11‑1410. This article 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 8‑11‑1420. Nothing in this article may be construed as allowing the total of all amounts received in an action or claim brought pursuant to this article, not including any back pay amount, to exceed those allowed pursuant to Section 15‑78‑120(2).”

SECTION 2. This act takes effect July 1, 2021 and applies for complaints for wage discrimination occurring after June 30, 2021.

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