

## **CHAPTER 34-06.1 EQUAL PAY FOR MEN AND WOMEN**

### **34-06.1-01. Declaration of public policy.**

The public policy of this state is declared to be 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 on jobs which have comparable requirements 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 workers' mobility, and increases labor costs; impairs purchasing power and threatens the maintenance of an adequate standard of living by such workers and their families; prevents optimum utilization of the state's available labor resources; threatens the well-being of citizens of this state; and adversely affects the general welfare. It is therefore declared to be the policy of this state through exercise of its police power to correct and, as rapidly as possible, to eliminate discriminatory wage practices based on sex.

### **34-06.1-02. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the labor commissioner.
2. "Employ" includes to suffer or permit to work.
3. "Employee" means any individual employed by an employer, including individuals employed by the state or any of its political subdivisions, including public bodies.
4. "Employer" means any person acting directly or indirectly in the interest of an employer in relation to one or more employees of each sex.
5. "Occupation" includes any industry, trade, business or branch thereof, or any employment or class of employment, but does not include domestic employment in private homes.
6. "Person" includes one or more individuals, partnerships, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.
7. "Wage rate" means all compensation for employment, including payment in kind and amounts paid by employers for employee benefits, as defined by the commissioner in regulations issued under this chapter.

### **34-06.1-03. Prohibition of discrimination.**

No employer may discriminate between employees in the same establishment on the basis of gender, by paying wages to any employee in any occupation in this state at a rate less than the rate at which the employer pays any employee of the opposite gender for comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility. Differentials that are paid pursuant to established seniority systems, job descriptive systems, merit increase systems, or executive training programs, and which do not discriminate on the basis of gender, are not within this prohibition. An employer who is paying a wage differential in violation of this chapter may not, in order to comply with this chapter, reduce the wage rates of any employee. No person may cause or attempt to cause an employer to discriminate against any employee in violation of this chapter. No employer may discharge or discriminate against any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of this chapter, except when proven that the act of the employee is fraudulent.

### **34-06.1-04. Powers of commissioner.**

The commissioner has the power and duty to carry out the provisions of this chapter and for this purpose, the commissioner, or the commissioner's authorized representative, has power to:

1. With the consent of the employer or upon appropriate court order, for cause, enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and operations on which persons

employed by the employer are engaged, to question such persons, and to obtain such other information as is reasonably necessary to the administration and enforcement of this chapter.

2. Examine witnesses under oath, and to require by subpoena the attendance and testimony of witnesses and the production of any documentary evidence relating to the subject matter of any investigation undertaken pursuant to this section.
3. Eliminate pay practices unlawful under this chapter, by informal methods of conference, conciliation and persuasion, and to supervise the payment of wages owing to any employee under this chapter.
4. Issue such regulations, not inconsistent with the purpose of this chapter, as the commissioner deems necessary or appropriate to carry out its provisions.

Witnesses summoned by the commissioner or the commissioner's authorized representative must be paid the same fees as are allowed witnesses attending the district courts of this state. In the event of the failure of a person to attend, testify, or produce documents under or in response to a subpoena, the court on application of the commissioner or the commissioner's representative may issue an order requiring said person to appear before the commissioner or authorized representative, or to produce documentary evidence, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

#### **34-06.1-05. Collection of unpaid wages and other relief.**

Any employer who violates the provisions of section 34-06.1-03 is liable to the employee or employees affected in the amount of their unpaid wages and in instances of willful violation in employee suits up to an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of the employee or group of employees and other employees similarly situated. The court in such action shall, in cases of violation in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. An agreement by any such employee to work for less than the wage to which such employee is entitled under this chapter is not a bar to any such action or to a voluntary wage restitution of the full amount due under this chapter. At the written request of any employee claiming to have been paid less than the wage to which the employee may be entitled under this chapter, the commissioner may bring any legal action necessary in behalf of the employee to collect such claim for unpaid wages. The commissioner may not be required to pay the filing fee, or other costs, in connection with such action. The commissioner has the power to join various claims against the employer in one claim for relief. In proceedings under this section, the court may order other affirmative action as appropriate, including reinstatement of employees discharged in violation of this chapter. The commissioner has the power to petition any court of competent jurisdiction to restrain violations of section 34-06.1-03, and for such affirmative relief as the court may deem appropriate, including restoration of unpaid wages and reinstatement of employees, consistent with the purpose of this chapter.

#### **34-06.1-06. Statute of limitations.**

Court action under this chapter may be commenced no later than two years after the claim for relief occurs.

#### **34-06.1-07. Records and reporting.**

Every employer subject to this chapter shall make, keep, and maintain such records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by the employer, and shall preserve such records for such periods of time, and shall make such reports therefrom as the commissioner prescribes.

#### **34-06.1-08. Posting of law.**

Repealed by S.L. 1997, ch. 296, § 1.

**34-06.1-09. Penalties.**

Any person who violates any provision of this chapter, or who discharges or in any other manner discriminates against any employee because such employee has made any complaint relating to a violation of any provision of this chapter, or has instituted, or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings, is guilty of a class B misdemeanor.