

By: Representative Fleming

To: Labor

HOUSE BILL NO. 458

1 AN ACT TO CREATE THE "FAIR PAY ACT OF 2005" FOR THE PURPOSE
2 OF ELIMINATING DISCRIMINATORY WAGE PRACTICES BASED ON SEX, RACE OR
3 NATIONAL ORIGIN; TO PROVIDE DEFINITIONS; TO PROVIDE UNLAWFUL
4 EMPLOYMENT PRACTICES; TO REQUIRE CERTAIN WAGE DISCLOSURES TO
5 EMPLOYEES BY EMPLOYERS; TO PROVIDE REMEDIES FOR VIOLATIONS OF THIS
6 ACT; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** This act shall be known and may be cited as the
9 "Fair Pay Act of 2005."

10 **SECTION 2.** The Legislature finds the following:

11 (a) Despite federal and state laws banning
12 discrimination in employment and pay, in both the private and
13 public sector, wage differentials persist between women and men
14 and between minorities and nonminorities in the same jobs and in
15 jobs that are dissimilar but that require equivalent composites of
16 skill, effort, responsibility and working conditions.

17 (b) The existence of such wage differentials:

18 (i) Depresses wages and living standards for
19 employees necessary for their health and efficiency;

20 (ii) Reduces family incomes and contributes to the
21 higher poverty rates among female-headed and minority households;

22 (iii) Prevents the maximum utilization of the
23 available labor resources;

24 (iv) Tends to cause labor disputes, thereby
25 burdening, affecting and obstructing commerce;

26 (v) Constitutes an unfair method of competition;

27 and

28 (vi) Violates the state's public policy against
29 discrimination.

30 (c) Discrimination in wage-setting practices has played
31 a role in depressing wages for women and minorities generally.

32 (d) Many individuals work in occupations that are
33 dominated by individuals of their same sex, race or national
34 origin, and discrimination in hiring, job assignment and promotion
35 has played a role in establishing and maintaining segregated work
36 forces.

37 (e) Eliminating discrimination in compensation based on
38 sex, race and national origin would have positive effects,
39 including:

40 (i) Providing a solution to problems in the
41 economy created by discriminatory wage differentials;

42 (ii) Reducing the number of working women and
43 people of color earning low wages, thereby lowering their
44 incidence of poverty during normal working years and in
45 retirement; and

46 (iii) Promoting stable families by raising family
47 incomes.

48 **SECTION 3.** It is the purpose of this act to correct and as
49 rapidly as practicable to eliminate discriminatory wage practices
50 based on sex, race or national origin.

51 **SECTION 4.** The following terms shall have the meanings
52 ascribed herein unless the context clearly indicates otherwise:

53 (a) The term "employ" means to suffer or permit to
54 work.

55 (b) The term "employee" means any person employed by an
56 employer and includes all of an employer's permanent employees,
57 whether working full time or part time, and any temporary employee
58 employed by an employer for a period of at least three (3) months.
59 "Employee" shall not include any individual employed by his
60 parents, spouse or child.

61 (c) The term "employer" means any person who employs
62 three (3) or more persons and includes the state and all political
63 subdivisions thereof.

64 (d) The term "equivalent jobs" means jobs or
65 occupations that are equal within the meaning of the Equal Pay Act
66 of 1963, 29 USCS 206(d), or jobs or occupations that are
67 dissimilar but whose requirements are equivalent, when viewed as a
68 composite of skills, effort, responsibility and working
69 conditions.

70 (e) The term "person" means one or more individuals,
71 partnerships, associations, corporations, limited liability
72 companies, legal representatives, trustees, trustees in
73 bankruptcy, receivers and the state and all political subdivisions
74 and agencies thereof.

75 (f) The term "labor organization" means any
76 organization that exists for the purpose, in whole or in part, of
77 collective bargaining or of dealing with employers concerning
78 grievances, terms of conditions of employment or of other mutual
79 aid or protection in connection with employment.

80 (g) The term "market rates" means the rates that
81 employers within a prescribed geographic area actually pay, or are
82 reported to pay, for specific jobs, as determined by formal or
83 informal surveys, wage studies or other means.

84 (h) The term "wages" and wage "rates" includes all
85 compensation in any form that an employer provides to employees in
86 payment for work done or services rendered, including, but not
87 limited to, base pay, bonuses, commissions, awards, tips or
88 various forms of nonmonetary compensation if provided in lieu of
89 or in addition to monetary compensation and that have economic
90 value to an employee.

91 **SECTION 5.** (1) It shall be an unlawful employment practice
92 in violation of this chapter for an employer to discriminate
93 between employees on the basis of sex, race or national origin by:

94 (a) Paying wages to employees at a rate less than the
95 rate paid to employees of the opposite sex or of a different race
96 or national origin for work in equivalent jobs; or

97 (b) Paying wages to employees in a job that is
98 dominated by employees of a particular sex, race or national
99 origin at a rate less than the rate at which such employer pays to
100 employees in another job that is dominated by employees of the
101 opposite sex or of a different race or national origin for work on
102 equivalent jobs.

103 (2) Notwithstanding subsection (1) of this section, it shall
104 not be an unlawful employment practice for an employer to pay
105 different wage rates to employees where such payments are made
106 under:

107 (a) A bona fide seniority or merit system;

108 (b) A system that measures earnings by quantity or
109 quality of production; or

110 (c) Any bona fide factor other than sex, race or
111 national origin; however, wage differentials based on varying
112 market rates for equivalent jobs or the differing economic
113 benefits to the employer of equivalent jobs shall not be
114 considered differentials based on bona fide factors other than
115 sex, race or national origin.

116 (3) An employer who is paying wages in violation of this
117 section shall not, in order to comply with the provisions of this
118 section, reduce the wage of any employee.

119 (4) No labor organization or its agents representing
120 employees of an employer having employees subject to any
121 provisions of this act shall cause or attempt to cause such an
122 employer to discriminate against an employee in violation of this
123 section.

124 (5) The Mississippi Department of Employment Security shall
125 promulgate guidelines specifying the criteria for determining
126 whether a job is dominated by employees of a particular sex, race

127 or national origin. Criteria shall include, but not be limited
128 to, factors such as whether the job has ever been formally
129 classified as or traditionally considered to be a "male" or
130 "female" or "white" or "minority" job; whether there is a history
131 of discrimination against women or people of color with regard to
132 wages, assignment or access to jobs or other terms and conditions
133 of employment; and the demographic composition of the work force
134 in equivalent jobs. The guidelines shall not include a list of
135 jobs.

136 **SECTION 6.** It shall be an unlawful employment practice in
137 violation of this act for an employer:

138 (a) To take adverse actions or otherwise discriminate
139 against any individual because such individual has opposed any act
140 or practice made unlawful by this act, has sought to enforce
141 rights protected under this act or has testified, assisted or
142 participated in any manner in an investigation, hearing or other
143 proceeding to enforce this act; or

144 (b) To discharge or in any other manner discriminate
145 against, coerce, intimidate, threaten or interfere with any
146 employee or any other person because the employee inquired about,
147 disclosed, compared or otherwise discussed the employee's wages or
148 the wages of any other employee, or because the employee
149 exercised, enjoyed, aided or encouraged any other person to
150 exercise or enjoy any right granted or protected by this act.

151 **SECTION 7.** (1) Upon the beginning of an individual's
152 employment and at least annually thereafter, every employer
153 subject to this act shall provide to each employee a written
154 statement sufficient to inform the employee of his or her job
155 title, wage rate and how the wage is calculated. This notice
156 shall be supplemented whenever an employee is promoted or
157 reassigned to a different position with the employer; however, the
158 employer is not required to issue supplemental notifications for

159 temporary reassignments that are no greater than three (3) months
160 in duration.

161 (2) Every employer subject to this act shall make and
162 preserve records that document the wages paid to employees and
163 that document and support the method, system, calculations and
164 other basis used to establish, adjust and determine the wage rates
165 paid to the employer's employees. Every employer subject to this
166 act shall preserve such records for such periods of time and shall
167 make such reports from the records as shall be prescribed by
168 regulation or order by the Department of Employment Security.

169 (3) The regulations promulgated under this act, relating to
170 the form of reports required by subsection (2) of this section,
171 shall provide for protection of the confidentiality of employees
172 and shall expressly require that reports shall not include the
173 names or other identifying information from which readers could
174 discern the identities of employees. The regulations may also
175 identify circumstances that warrant a prohibition on disclosure of
176 reports of information identifying the employer.

177 (4) The Department of Employment Security may use the
178 information and data it collects under subsection (2) of this
179 section for statistical and research purposes and may compile and
180 publish such studies, analyses, reports and surveys based on the
181 information and data as it may consider appropriate.

182 **SECTION 8.** (1) In any action in which a court or jury finds
183 that an employer has engaged in acts that violate Sections 5, 6 or
184 7 of this act, the court or jury shall award to any affected
185 employee or employees monetary relief including back pay in an
186 amount equal to the difference between the employees' actual
187 earnings and what the employee would have earned but for the
188 employer's unlawful practices and an additional amount in
189 compensatory and punitive damages, as appropriate.

190 (2) In any action in which a court or jury finds that an
191 employer has engaged in acts that violate Section 5, 6 or 7 of

192 this act, the court shall enjoin the employer from continuing to
193 discriminate against affected employees and shall direct the
194 employer to comply with the provisions of this act and may order
195 the employer to take such additional affirmative steps as are
196 necessary, including reinstatement or reclassification of affected
197 workers, to ensure an end to unlawful discrimination.

198 (3) In any action in which an affected employee or employees
199 prevail in their claims against employers, the court shall, in
200 addition to any judgment awarded to the plaintiffs, allow a
201 reasonable attorney's fee, reasonable expert witness fees and
202 other costs of the action to be paid by the employer.

203 (4) An action to recover the damages or equitable relief
204 prescribed in this section may be maintained against any employer
205 in any court of competent jurisdiction by any one or more
206 employees or their representative for or on behalf of:

207 (a) The employees; or

208 (b) The employees and other employees similarly
209 situated.

210 (5) An action may be brought under this section not later
211 than two (2) years after the date of the last event constituting
212 the alleged violation for which the action is brought.

213 **SECTION 9.** This act shall take effect and be in force from
214 and after July 1, 2005.