

By: Representative Williams-Barnes

To: Workforce Development;
Judiciary A

HOUSE BILL NO. 1224

1 AN ACT TO CREATE THE EVELYN GANDY FAIR PAY ACT TO PROHIBIT
2 DISCRIMINATION BY INDUSTRIES ENGAGED IN COMMERCE OR IN THE
3 PRODUCTION OF GOODS FOR COMMERCE AGAINST ANY EMPLOYEE ON THE BASIS
4 OF SEX BY PAYING A SALARY OR WAGE TO SUCH EMPLOYEE AT A RATE LESS
5 THAN THE RATE PAID TO ITS EMPLOYEES OF THE OPPOSITE SEX FOR EQUAL
6 WORK ON JOBS THAT REQUIRE EQUAL SKILL, EFFORT AND RESPONSIBILITY
7 TO PERFORM; TO PROVIDE WHEN AN UNLAWFUL EMPLOYMENT PRACTICE
8 OCCURS; TO PROVIDE THE REMEDIES FOR AN EMPLOYER WHEN AN UNLAWFUL
9 EMPLOYMENT PRACTICE OCCURS; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** This act shall be known and may be cited as the
12 "Evelyn Gandy Fair Pay Act."

13 **SECTION 2.** The Mississippi Legislature finds that the
14 existence of wage differentials based on sex in industries engaged
15 in commerce or in the production of goods for commerce:

16 (a) Depresses the wages and living standards for
17 employees that are necessary for their health and efficiency,
18 thereby increasing the poverty rate in Mississippi;

19 (b) Prevents the maximum utilization of the available
20 labor resources, thereby depressing the growth of the state GDP;



(c) Tends to cause labor disputes, thereby burdening, affecting and obstructing commerce;

(d) Burdens commerce and the free flow of goods in commerce; and

(e) Constitutes an unfair method of competition.

SECTION 3. (1) No employer shall discriminate in any way against any employee on the basis of sex by paying a salary or wage to any employee at a rate less than the rate paid to its employees of the opposite sex for equal work on jobs that require equal skill, effort and responsibility to perform, and which are performed under similar working conditions, except where such payment is made pursuant to:

(a) A seniority system; however, time spent on leave due to a pregnancy-related condition and parental, family and medical leave, shall not reduce the seniority-level of an employee;

(b) A merit system;

(c) A system which measures earnings by quantity or quality of production; or

(d) A differential based on any bona fide factor other than sex if the factor:

(i) Is not based on or derived from a differential in wage based on sex;

(ii) Is job-related with respect to the position and necessary for the business; and



46 (iii) Accounts for the entire differential.

47 An employer who is paying a wage rate differential in
48 violation of this subsection shall not, in order to comply with
49 the provisions of this subsection, reduce the wage rate of any
50 employee.

51 (2) (a) No labor organization, or its agents, representing
52 employees of an employer whose employees are subject to the
53 provisions of this section, shall cause or attempt to cause the
54 employer to discriminate against an employee in violation of
55 subsection (1) of this section.

56 (b) As used in this subsection (2), the term "labor
57 organization" means any organization of any kind, or any agency or
58 employee representation committee or plan, in which employees
59 participate and which exists for the purpose, in whole or in part,
60 of dealing with employers concerning grievances, labor disputes,
61 wages, rates of pay, hours of employment or conditions of work.

62 (3) For purposes of administration and enforcement, any
63 amounts owed to an employee that have been withheld in violation
64 of this section shall be deemed to be unpaid minimum wages or
65 unpaid overtime compensation.

66 (4) (a) An employer that has been charged with unlawful sex
67 discrimination under this section shall be entitled to a
68 rebuttable presumption that the employer has not engaged in
69 unlawful sex discrimination in violation of this section if:



70 (i) The charge is made by an employee who holds a
71 job predominantly occupied by members of one (1) sex, which means
72 that at least seventy-five percent (75%) of the occupants of the
73 job are of the same sex, and the employee alleges he or she is
74 being paid less than an employee who does a different job;

75 (ii) The employer has, within two (2) years of the
76 commencement of the action, completed a self-evaluation that meets
77 the standards set forth in paragraph (d) of this subsection; and

78 (iii) The employer makes an affirmative showing
79 that it has made reasonable and substantial progress towards
80 eliminating wage differentials, including implementing any
81 required remediation plan, between jobs of equivalent value,
82 including the job of the employee making the charge, in accordance
83 with the self-evaluation required in subparagraph (ii) of this
84 paragraph.

85 (b) In such cases, the court must give the aggrieved
86 party an opportunity to rebut this presumption through evidence
87 that reasonably demonstrates that, notwithstanding the employer's
88 self-evaluation, the employer has violated this section. In
89 rebutting this presumption, the aggrieved party may provide all
90 relevant information including, but not limited to, evidence that:

91 (i) The employer's job analysis devalues
92 attributes associated with jobs occupied predominantly by members
93 of one (1) sex and/or over-values attributes associated with jobs
94 occupied predominantly by members of the opposite sex;



(ii) The job the aggrieved party occupies was not adequately evaluated; or

(iii) A job evaluation process has been completed and, if necessary, a remediation process is in progress or has been completed, but the self-evaluation has not been reviewed and updated at reasonable intervals to adjust for changes in the work environment over time.

(c) An employer wishing to be availed of this presumption must produce documentation that describes the self-evaluation process in detail sufficient to show that the employer has met the standards under paragraph (d).

(d) In order to be eligible for the presumption of compliance, the self-evaluation must:

(i) Clearly define the employer's establishment;

(ii) Analyze the employee population to identify differentials in wages, including raises, bonuses, incentive payments and other forms of remuneration, based on sex;

(iii) Establish a job evaluation plan to determine the value of jobs within the establishment. The plan must:

1. Be free of any bias based on a person's sex;

2. Allow for the comparison of all jobs; and

3. Fully and accurately measure the skill, effort, responsibility and working conditions of each job based on the actual work performance requirements of the jobs evaluated;



(iv) Apply the job evaluation plan to all jobs;

(v) Create a salary structure or have an identifying salary group system where jobs of equal value are placed in the same level or grouping;

(vi) Determine for each salary grouping, or for each total job evaluation score, the pay differential between jobs that are predominantly occupied by one (1) sex and other jobs, including those predominantly occupied by the opposite sex, in order to identify any wage rate discrimination; and

(vii) Remedy any pay differential identified in subsection (vi); however, such remediation may not reduce the pay of any employee or class of employees.

The presumption of compliance may be strengthened where, through the self-evaluation, including any needed remediation, the employer maintains communication with and keeps employees apprised of the process. The method and procedure for that communication may vary according to the size and organizational structure of the establishment, but any method or procedure chosen should be adequate to reach all employees at the establishment.

(5) It shall be an unlawful employment practice for an employer to:

(a) Require, as a condition of employment, that an employee refrain from inquiring about, discussing or disclosing his or her wages or the wages of another employee;



144 (b) Require an employee to sign a waiver or other
145 document which purports to deny an employee the right to disclose
146 or discuss his or her wages;

147 (c) Discharge, formally discipline, or otherwise
148 discriminate against an employee for inquiring about, discussing,
149 or disclosing his or her wages or the wages of another employee;
150 however, nothing in this subsection (5) creates an obligation for
151 an employer or employee to disclose wages;

152 (d) Retaliate or in any other manner discriminate
153 against an employee or applicant for employment because that
154 individual has opposed a practice made unlawful by this act or
155 because that individual has made a charge, filed a complaint, or
156 instituted or caused to be instituted any investigation,
157 proceeding, hearing, or action under or related to this act,
158 including an investigation conducted by the employer, or has
159 testified or is planning to testify, or has assisted, or
160 participated in any manner in any such investigation, proceeding,
161 or hearing under this act.

162 (6) (a) A civil action asserting a violation of this
163 section may be maintained against any employer in any court of
164 competent jurisdiction by any one or more employees for or on
165 behalf of the employee, a group of employees, and other employees
166 similarly situated. Any such action shall commence no later than
167 two (2) years after the discriminatory practice declared unlawful
168 by this section has occurred. A discriminatory practice occurs



169 when a discriminatory compensation decision or other practice is
170 adopted, when an employee is subjected to a discriminatory
171 compensation decision or other practice, or when an employee is
172 affected by the application of a discriminatory compensation
173 decision or other practice, including each time wages, benefits,
174 or other compensation is paid based on the discriminatory
175 compensation decision or other practice.

176 (b) If an employer is found in violation of this
177 section, the employee may recover in a civil action the amount of
178 their unpaid wages; liquidated damages; compensatory damages;
179 punitive damages as may be appropriate, where the employee
180 demonstrates that the employer acted with malice or reckless
181 indifference; other equitable relief as may be appropriate; and
182 the costs of the action and reasonable attorney's fees.

183 **SECTION 4.** This act shall take effect and be in force from
184 and after its passage.

