

By: Representatives Williams-Barnes, Stamps, To: Judiciary A
Bell (65th), Paden

HOUSE BILL NO. 1136

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, RACE OR ETHNICITY BY PAYING A SALARY OR WAGE TO SUCH
5 EMPLOYEE AT A RATE LESS THAN THE RATE PAID TO ITS EMPLOYEES OF
6 ANOTHER SEX, RACE OR ETHNICITY FOR EQUAL WORK ON JOBS THAT REQUIRE
7 EQUAL SKILL, EFFORT AND RESPONSIBILITY TO PERFORM; TO PROVIDE WHEN
8 AN UNLAWFUL EMPLOYMENT PRACTICE OCCURS; TO PROVIDE THE REMEDIES
9 FOR AN EMPLOYER WHEN AN UNLAWFUL EMPLOYMENT PRACTICE OCCURS; TO
10 PROVIDE THE DAMAGES AN EMPLOYEE MAY RECOVER WHEN AN UNLAWFUL
11 EMPLOYMENT PRACTICE OCCURS; AND FOR RELATED PURPOSES.

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

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

15 **SECTION 2.** The Mississippi Legislature finds that the
16 existence of wage differentials based on sex, race and ethnicity
17 in industries engaged in commerce or in the production of goods
18 for commerce:

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



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

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

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

28 (e) Constitutes an unfair method of competition.

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

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

40 (b) A merit system;

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

43 (d) A differential based on any bona fide factor other
44 than sex, race or ethnicity if the factor:

45 (i) Is not based on or derived from a differential
46 in wage based on sex, race or ethnicity;



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

49 (iii) Accounts for the entire differential.

50 An employer who is paying a wage rate differential in
51 violation of this subsection shall not, in order to comply with
52 the provisions of this subsection, reduce the wage rate of any
53 employee. An individual's wage history cannot, by itself, justify
54 an otherwise unlawful wage rate differential.

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

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

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

70 (4) (a) An employer that has been charged with unlawful
71 sex, race or ethnicity discrimination under subsection (1) may



72 file a motion to disallow an award of liquidated, compensatory and
73 punitive damages if within three (3) years before the date that
74 the employee filed the action, the employer:

75 (i) Completed a self-evaluation of its pay
76 practices in good faith that was related to the protected class
77 asserted by the employee in the action; and

78 (ii) Eliminated the wage differentials for the
79 employee and has made reasonable and substantial progress toward
80 eliminating wage differentials for the protected class asserted by
81 the employee.

82 (b) For purposes of this subsection, an employer's
83 self-evaluation may be of the employer's own design, so long as
84 the scope and detail in the analysis reflects the exercise of due
85 diligence to identify, prevent and mitigate actual and potential
86 violations in light of the size of the employer.

87 (c) In determining if a self-evaluation reflects the
88 exercise of due diligence, the factors the court may consider
89 include, but are not limited to:

90 (i) Whether the evaluation includes all relevant
91 jobs and employees;

92 (ii) Whether an employer's analysis makes a
93 reasonable effort to identify similar jobs and employees using a
94 consistent fact-based approach;

95 (iii) Whether the employer has tested explanatory
96 factors for an unbiased and relevant relationship to pay;



97 (iv) Whether the evaluation takes into account all
98 reasonably relevant and available information; and

99 (v) Whether the evaluation is reasonably
100 sophisticated in its analysis of potentially comparable work,
101 employee compensation and the application of the permissible
102 reasons for compensation differentials set forth in subsection
103 (1).

104 If an employer fails to retain the records necessary to show
105 how it evaluated and applied these factors, it may give rise to an
106 inference the employer did not exercise due diligence in
107 conducting the analysis.

108 (d) Evidence a self-evaluation was conducted or
109 remedial steps undertaken in accordance with subsection (4) is not
110 sufficient evidence, standing alone, to find a violation of
111 subsection (1) occurred prior to the date the self-evaluation was
112 completed.

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

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

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



121 (c) Discharge, formally discipline or otherwise
122 discriminate against an employee for inquiring about, discussing
123 or disclosing his or her wages or the wages of another employee;
124 however, nothing in this subsection (5) creates an obligation for
125 an employer or employee to disclose wages;

126 (d) Rely on the wage history of an applicant for
127 employment in considering the applicant for employment;

128 (e) Rely on the wage history of an applicant for
129 employment in determining the wages such applicant is to be paid
130 by the employer upon hire;

131 (f) To seek the wage history of an applicant; provided,
132 however, that after the employer makes an initial offer of
133 employment with an offer of compensation to an applicant for
134 employment, an employer may:

135 (i) Rely on wage history to support a wage higher
136 than the wage offered by the employer, if wage history is
137 voluntarily provided by the applicant for employment without
138 prompting from the employer;

139 (ii) Seek to confirm the wage history of the
140 applicant for employment to support a wage higher than the wage
141 offered by the employer when relying on wage history as permitted
142 in subparagraph (i) above.

143 An employer may rely on wage history in these circumstances
144 to the extent that the higher wage does not create an unlawful



145 wage differential based on a protected characteristic as set out
146 in subsection (1) of this section.

147 (g) Retaliate or in any other manner discriminate
148 against an employee or applicant for employment because that
149 individual has opposed a practice made unlawful by this act,
150 including refusing to provide his or her wage history, or because
151 that individual has made a charge, filed a complaint, or
152 instituted or caused to be instituted any investigation,
153 proceeding, hearing or action under or related to this act,
154 including an investigation conducted by the employer, or has
155 testified or is planning to testify, or has assisted, or
156 participated in any manner in any such investigation, proceeding
157 or hearing under this act.

158 (6) (a) A civil action asserting a violation of this
159 section may be maintained against any employer in any court of
160 competent jurisdiction by any one or more employees for or on
161 behalf of the employee, a group of employees, and other employees
162 similarly situated. Any such action shall commence no later than
163 two (2) years after the discriminatory practice declared unlawful
164 by this section has occurred. A discriminatory practice occurs
165 when a discriminatory compensation decision or other practice is
166 adopted, when an employee is subjected to a discriminatory
167 compensation decision or other practice, or when an employee is
168 affected by the application of a discriminatory compensation
169 decision or other practice, including each time wages, benefits,



170 or other compensation is paid based on the discriminatory
171 compensation decision or other practice.

172 (b) If an employer is found in violation of this
173 section, the employee may recover in a civil action the amount of
174 their unpaid wages; liquidated damages; compensatory damages or,
175 for a violation of subsections (5)(a) through (g), compensatory or
176 statutory damages not to exceed Ten Thousand Dollars (\$10,000.00)
177 whichever is greater; punitive damages as may be appropriate,
178 where the employee demonstrates that the employer acted with
179 malice or reckless indifference; other equitable relief as may be
180 appropriate; and the costs of the action and reasonable attorney's
181 fees.

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

