MISSISSIPPI LEGISLATURE

REGULAR SESSION 2022

By: Senator(s) Turner-Ford

To: Judiciary, Division A

SENATE BILL NO. 2452

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

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

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

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

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

(b) Prevents the maximum utilization of the available 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, race, or ethnicity by paying a salary or wage to any employee at a rate less than the rate paid to its employees of another sex, race, or ethnicity 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, race, or ethnicity if the factor:

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

(ii) Is job-related with respect to the position and necessary for the business; and
(iii) Accounts for the entire differential.

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

An individual's wage history cannot, by itself, justify an otherwise unlawful wage rate differential.

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

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

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

(4) (a) An employer that has been charged with unlawful sex, race, or ethnicity discrimination under subsection (1) of this section may file a motion to disallow an award of liquidated,
compensatory, and punitive damages if within three (3) years before the date that the employee filed the action, the employer:

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

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

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

(i) In determining if a self-evaluation reflects the exercise of due diligence, the factors the court may consider include, but are not limited to, whether the evaluation includes all relevant jobs and employees; whether an employer's analysis makes a reasonable effort to identify similar jobs and employees using a consistent fact-based approach; whether the employer has tested explanatory factors for an unbiased and relevant relationship to pay; whether the evaluation takes into account all reasonably relevant and available information; and whether the evaluation is reasonably sophisticated in its analysis of potentially comparable work, employee compensation, and the
application of the permissible reasons for compensation differentials set forth in subsection (1) of this section. If an employer fails to retain the records necessary to show how it evaluated and applied these factors, it may give rise to an inference the employer did not exercise due diligence in conducting the analysis; and

(ii) Evidence that a self-evaluation was conducted or remedial steps undertaken in accordance with this subsection (4) is not sufficient evidence, standing alone, to find a violation of subsection (1) of this section occurred prior to the date the self-evaluation was completed.

(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;

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

(c) Discharge, formally discipline or otherwise discriminate against an employee for inquiring about, discussing or disclosing his or her wages or the wages of another employee; however, nothing in this subsection (5) creates an obligation for an employer or employee to disclose wages;
(d) Rely on the wage history of an applicant for employment in considering the applicant for employment;
(e) Rely on the wage history of an applicant for employment in determining the wages such applicant is to be paid by the employer upon hire;
(f) To seek the wage history of an applicant; provided, however, that after the employer makes an initial offer of employment with an offer of compensation to an applicant for employment, an employer may:
   (i) Rely on wage history to support a wage higher than the wage offered by the employer, if wage history is voluntarily provided by the applicant for employment without prompting from the employer;
   (ii) Seek to confirm the wage history of the applicant for employment to support a wage higher than the wage offered by the employer when relying on wage history as permitted in subparagraph (i) of this paragraph.

An employer may rely on wage history in these circumstances to the extent that the higher wage does not create an unlawful wage differential based on a protected characteristic as set out in Section 3(1) of this act;

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

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

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

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