

PROGRAM BILL #22

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

LABOLA
(Prohibits differential pay because
of sex)

Lab. prohibit differential pay

AN ACT

to amend the labor law, in relation
to the prohibition of differential
pay because of sex

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s20 Adams	s17 Felder	s63 Kennedy	s25 Montgomery	s23 Savino
s15 Addabbo	s02 Flanagan	s34 Klein	s54 Nozzolio	s29 Serrano
s11 Avella	s08 Fuschillo	s28 Krueger	s55 O'Brien	s51 Seward
s40 Ball	s59 Gallivan	s24 Lanza	s58 O'Mara	s09 Skelos
s42 Bonacic	s12 Gianaris	s39 Larkin	s21 Parker	s14 Smith
s04 Boyle	s41 Gipson	s37 Latimer	s13 Peralta	s26 Squadron
s44 Breslin	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s38 Carlucci	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart- Cousins
s50 DeFrancisco	s60 Grisanti	s45 Little	s48 Ritchie	s46 Tkaczyk
s32 Diaz	s06 Hannon	s05 Marcellino	s33 Rivera	s53 Valesky
s18 Dilan	s36 Hassell-	s43 Marchione	s56 Robach	s57 Young
s31 Espaillat	Thompson	s07 Martins	s19 Sampson	s03 Zeldin
s49 Farley	s27 Hoylman	s62 Maziarz	s10 Sanders	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a081 Dinowitz	a135 Johns	a133 Nojaj	a140 Schimminger
a092 Abinanti	a147 DiPietro	a113 Jordan	a037 Nolan	a087 Sepulveda
a084 Arroyo	a115 Duprey	a094 Katz	a130 Oaks	a065 Silver
a035 Aubry	a004 Englebright	a074 Kavanagh	a069 O'Donnell	a027 Simanowitz
a120 Barclay	a054 Espinal	a142 Kearns	a051 Ortiz	a036 Simotas
a106 Barrett	a109 Fahy	a076 Kellner	a091 Otis	a104 Skartados
a060 Barron	a071 Farrell	a040 Kim	a132 Palmesano	a099 Skoufis
a082 Benedetto	a126 Finch	a131 Kolb	a088 Paulin	a022 Solages
a117 Blankenbush	a008 Fitzpatrick	a105 Lalor	a141 Peoples-	a114 Stec
a062 Borelli	a124 Friend	a013 Lavine	Stokes	a110 Steck
a055 Boyland	a143 Gabryszak	a050 Lentol	a058 Perry	a079 Stevenson
a026 Braunstein	a095 Galef	a125 Lifton	a089 Pretlow	a127 Stirpe
a044 Brennan	a137 Gantt	a102 Lopez, P.	a073 Quart	a011 Sweeney
a119 Brindisi	a007 Garbarino	a123 Lupardo	a019 Ra	a112 Tedisco
a138 Bronson	a077 Gibson	a010 Lupinacci	a098 Rabbitt	a101 Tenney
a046 Brook-Krasny	a148 Giglio	a121 Magee	a012 Raia	a001 Thiele
a093 Buchwald	a080 Gjonaj	a129 Magnarelli	a006 Ramos	a061 Titone
a118 Butler	a066 Glick	a059 Maisel	a134 Reilich	a031 Titus
a103 Cahill	a023 Goldfeder	a064 Malliotakis	a078 Rivera	a146 Walter
a043 Camara	a150 Goodeil	a030 Markey	a128 Roberts	a041 Weinstein
a145 Ceretto	a075 Gottfried	a090 Mayer	a056 Robinson	a020 Weisenberg
a033 Clark	a005 Graf	a108 McDonald	a068 Rodriguez	a024 Weprin
a047 Colton	a100 Gunther	a014 McDonough	a072 Rosa	a070 Wright
a032 Cook	a139 Hawley	a017 McKeivitt	a067 Rosenthal	a096 Zebrowski
a144 Corwin	a083 Heastie	a107 McLaughlin	a025 Rozic	a002
a085 Crespo	a003 Hennessey	a038 Miller	a116 Russell	a053
a122 Crouch	a028 Hevesi	a052 Millman	a149 Ryan	a086
a021 Curran	a048 Hikind	a015 Montesano	a009 Saladino	
a063 Cusick	a018 Hooper	a136 Morelle	a111 Santabarbara	
a045 Cymbrowitz	a042 Jacobs	a057 Mosley	a029 Scarborough	
a034 DenDekker	a097 Jaffee	a039 Moya	a016 Schimel	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and 4 copies of memorandum in support (single house);
or 4 signed copies of bill and 8 copies of memorandum
in support (uni-bill).

1 Section 1. Subdivision 1 of section 194 of the labor law, as added by
2 chapter 548 of the laws of 1966, is amended and three new subdivisions
3 2, 3 and 4 are added to read as follows:

4 1. No employee shall be paid a wage at a rate less than the rate at
5 which an employee of the opposite sex in the same establishment is paid
6 for equal work on a job the performance of which requires equal skill,
7 effort and responsibility, and which is performed under similar working
8 conditions, except where payment is made pursuant to a differential
9 based on:

10 a. a seniority system;

11 b. a merit system;

12 c. a system which measures earnings by quantity or quality of
13 production; or

14 d. [any other factor other than sex] a bona fide factor other than
15 sex, such as education, training, or experience. Such factor: (i) shall
16 not be based upon or derived from a sex-based differential in compen-
17 sation and (ii) shall be job-related with respect to the position in
18 question and shall be consistent with business necessity. Such exception
19 under this paragraph shall not apply when the employee demonstrates (A)
20 that an employer uses a particular employment practice that causes a
21 disparate impact on the basis of sex, (B) that an alternative employment
22 practice exists that would serve the same business purpose and not
23 produce such differential, and (C) that the employer has refused to
24 adopt such alternative practice.

25 2. For the purpose of subdivision one of this section, "business
26 necessity" shall be defined as a factor that bears a manifest relation-
27 ship to the employment in question.

1 3. For the purposes of subdivision one of this section, employees
2 shall be deemed to work in the same establishment if the employees work
3 for the same employer at workplaces located in the same geographical
4 region, no larger than a county, taking into account population distrib-
5 ution, economic activity, and/or the presence of municipalities.

6 4. (a) No employer shall prohibit an employee from inquiring about,
7 discussing, or disclosing the wages of such employee or another employ-
8 ee.

9 (b) An employer may, in a written policy provided to all employees,
10 establish reasonable workplace and workday limitations on the time,
11 place and manner for inquires about, discussion of, or the disclosure of
12 wages. Such limitations shall be consistent with standards promulgated
13 by the commissioner and shall be consistent with all other state and
14 federal laws. Such limitations may include prohibiting an employee from
15 discussing or disclosing the wages of another employee without such
16 employee's prior permission.

17 (c) Nothing in this subdivision shall require an employee to disclose
18 his or her wages. The failure of an employee to adhere to such reason-
19 able limitations in such written policy shall be an affirmative defense
20 to any claims made against an employer under this subdivision, provided
21 that any adverse employment action taken by the employer was for failure
22 to adhere to such reasonable limitations and not for mere inquiry,
23 discussion or disclosure of wages in accordance with such reasonable
24 limitations in such written policy.

25 (d) This prohibition shall not apply to instances in which an employee
26 who has access to the wage information of other employees as a part of
27 such employee's essential job functions discloses the wages of such
28 other employees to individuals who do not otherwise have access to such

1 information, unless such disclosure is in response to a complaint or
2 charge, or in furtherance of an investigation, proceeding, hearing, or
3 action under this chapter, including an investigation conducted by the
4 employer.

5 (e) Nothing in this section shall be construed to limit the rights of
6 an employee provided under any other provision of law or collective
7 bargaining agreement.

8 § 2. Subdivision 1-a of section 198 of the labor law, as amended by
9 chapter 564 of the laws of 2010, is amended to read as follows:

10 1-a. On behalf of any employee paid less than the wage to which he or
11 she is entitled under the provisions of this article, the commissioner
12 may bring any legal action necessary, including administrative action,
13 to collect such claim and as part of such legal action, in addition to
14 any other remedies and penalties otherwise available under this article,
15 the commissioner shall assess against the employer the full amount of
16 any such underpayment, and an additional amount as liquidated damages,
17 unless the employer proves a good faith basis for believing that its
18 underpayment of wages was in compliance with the law. Liquidated damages
19 shall be calculated by the commissioner as no more than one hundred
20 percent of the total amount of wages found to be due, except such liqui-
21 dated damages may be up to three hundred percent of the total amount of
22 the wages found to be due for a willful violation of section one hundred
23 ninety-four of this article. In any action instituted in the courts upon
24 a wage claim by an employee or the commissioner in which the employee
25 prevails, the court shall allow such employee to recover the full amount
26 of any underpayment, all reasonable attorney's fees, prejudgment inter-
27 est as required under the civil practice law and rules, and, unless the
28 employer proves a good faith basis to believe that its underpayment of

1 wages was in compliance with the law, an additional amount as liquidated
2 damages equal to one hundred percent of the total amount of the wages
3 found to be due, except such liquidated damages may be up to three
4 hundred percent of the total amount of the wages found to be due for a
5 willful violation of section one hundred ninety-four of this article.

6 § 3. The department of labor and the division of human rights shall
7 make training available to assist employers in developing training,
8 policies and procedures to address discrimination and harassment in the
9 workplace including, but not limited to issues relating to pregnancy,
10 familial status, pay equity and sexual harassment. Such training shall
11 take into account the needs of employers of various sizes. The depart-
12 ment and division shall make such training available through, including
13 but not limited to, online means. In developing such training materi-
14 als, the department and division shall afford the public an opportunity
15 to submit comments on such training.

16 § 4. Severability clause. If any clause, sentence, paragraph, subdivi-
17 sion, section or part of this act shall be adjudged by a court of compe-
18 tent jurisdiction to be invalid, such judgment shall not affect, impair
19 or invalidate the remainder thereof, but shall be confined in its opera-
20 tion to the clause, sentence, paragraph, subdivision, section or part
21 thereof directly involved in the controversy in which such judgment
22 shall have been rendered. It is hereby declared to be the intent of the
23 legislature that this act would have been enacted even if such invalid
24 provisions had not been included herein.

25 § 5. This act shall take effect on the ninetieth day after it shall
26 have become a law; provided, however, that the commissioner of labor
27 shall take actions necessary to provide for the promulgation of stand-
28 ards pursuant to subdivision 4 of section 194 of the labor law, as added

1 by section one of this act, prior to this act taking effect; and
2 provided further, however, that the department of labor and division of
3 human rights shall take actions necessary to establish training pursuant
4 to section three of this act prior to this act taking effect.