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## SENATE BILL NO. 789

Offered January 9, 2013

Prefiled December 19, 2012

A *BILL to amend and reenact § 40.1-28.6 of the Code of Virginia, relating to the equal compensation of employees irrespective of sex; penalties.*

Patrons—McEachin and Herring

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That § 40.1-28.6 of the Code of Virginia is amended and reenacted as follows:**

**§ 40.1-28.6. Equal pay, benefits, and privileges irrespective of sex.**

A. As used in this section, "benefits and privileges" means health insurance, retirement benefits under defined benefit pension plans, employer contributions under defined contribution retirement plans, life insurance, disability insurance, work breaks for meals or periods of rest, paid vacation and holidays, and sick leave that are incidents of employment in addition to the cash remuneration earned.

B. No employer having employees shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by ~~paying~~:

1. Paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions; ~~except~~; or

2. Providing benefits and privileges to employees in such establishment that are lesser in quantity or value than those provided to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

C. The prohibitions in subsection B shall not apply where such discriminatory payment or provision is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

D. For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this section shall be deemed to be unpaid wages or unpaid overtime compensation ~~and the~~.

E. An employer shall not discharge, discipline, threaten to discharge or discipline, or otherwise penalize an employee for the employee's inquiring about, discussing, sharing, or disclosing information about the wages, benefits, or privileges of the employee or another employee. This subsection shall not apply to instances in which an employee who has access to information about the wages, benefits, or privileges of other employees as a part of such employee's essential job functions discloses such information of such other employees to an individual who does not otherwise have access to such information, unless such disclosure is in response to a charge or complaint or in furtherance of an investigation, proceeding, hearing, or action under state or federal law, including an investigation conducted by the employer. Nothing in this subsection shall be construed to limit the rights of an employee provided under any other provision of law.

F. An employee whose wages have been wrongfully withheld in violation of this section shall have a right of action therefor to recover damages to the extent of ~~two~~ three times the amount of wages or benefits and privileges so withheld. The court shall award reasonable attorney fees and costs to the employee if the employee substantially prevails on the merits of a case brought under this section.

G. This section shall not apply to employers covered by the Fair Labor Standards Act of 1938 as amended.

H. Every action under this section shall be brought within two years next after the right to bring the same shall have accrued; provided, however, that nothing herein shall be construed to give rise to a cause of action for work performed prior to July 1, 1974.

INTRODUCED

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