

Memorandum in Support

NYSBA #9

April 27, 2015

S. 1

By: Senator Savino

A. 6075

By: M. of A. Titus

Senate Committee: RULES

Assembly Committee: Labor

Effective Date: 90 days after becoming law

AN ACT to amend the Labor Law, in relation to the prohibition of differential pay because of sex

This bill would amend Labor Law §194, which prohibits a differential in rate of pay because of sex. The amendments this bill offers would modify the equal pay exceptions in §194 to require that a differential in the rate of pay may be based on a bona fide factor other than sex such as education, training or experience. Such a factor could not be based on a sex-based differential and must be job-related and consistent with a business necessity. This standard would mirror the current defense afforded to employers in disparate impact cases under Title VII of the Civil Rights Act.

The exception added by this bill would not apply if the employee demonstrates that an employer: (A) uses a particular employment practice that causes a disparate impact on the basis of sex, (B) that an alternative employment practice exists that would serve the same business purpose and not produce such differential, and (C) that the employer has refused to adopt such alternative practice.

The bill would define “business necessity” as a factor that bears a manifest relationship to the employment in question, as enunciated by the Supreme Court of the United States in *Griggs v. Duke Power. Co.*, 401 U S. 424 (1971) and subsequent cases. Additionally, §194 would be amended to clarify that a differential in pay may not exist, if the two employees whose rate of pay is being compared, work in different physical locations, provided that those locations are in the same geographic region. §194 would also be amended to forbid employers from prohibiting employees from sharing wage information.

This bill would also amend Labor Law §198 to increase the penalty for willful violations of §194. Finally, the bill would require the Department of Labor and the Division of Human Rights to make training available to employers to assist employers in developing policies and procedures to address discrimination and harassment in the workplace.

The New York State Bar Association supports measures to strengthen laws that improve the lives of women, children and their families in New York State and provides access to justice and the full protection of our laws.

The Association's support for this bill, which seeks to level the playing field for women in order to achieve equal pay for equal work, is based on a 2011 report by its Committee on Women in the Law. The 2011 report set out among its recommendations the following goals:

Close the Pay Gap: The legislation is an important step toward closing the pay gap that costs the average woman, her spouse and dependent family a significant amount in real earnings, not including the negative impact the difference also has on both Social Security and pension benefits for women.

Change in Breadwinner Status: The legislation would recognize that women have evolved as family breadwinners and carry the same economic responsibilities, including debt load, that their male counterparts do – however, with less resources, keeping some women and their families at or near poverty levels.

Lift New Yorkers out of Poverty: At all levels of education, women earn significantly less than what their male counterparts earn. Lower earnings result in more acute economic inequities for women of color. By addressing the wage and income disparity, New York will help lift unmarried and divorced women, who are the most likely to have responsibility for raising and supporting their children, out of poverty and dependence on public assistance.

For the foregoing reasons, the New York State Bar Association **SUPPORTS** this legislation.