

House Bill 345

By: Representatives Cannon of the 58th, Drenner of the 85th, Bazemore of the 63rd, and McClain of the 100th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to repeal Chapter 5, relating to sex discrimination in employment, and to
3 enact certain provisions that prohibit discrimination in payment of wages on the basis of the
4 sex of an employee; to provide for definitions; to prohibit requiring an employee to refrain
5 from discussing wage and benefit information; to prohibit an employer from seeking certain
6 wage history information under certain circumstances; to provide for a cause of action and
7 damages; to provide for affirmative defenses; to provide for limitations; to provide a short
8 title; to provide for related matters; to provide an effective date; to repeal conflicting laws;
9 and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Georgia Pay Equity Act."

13 **SECTION 2.**

14 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
15 is amended by repealing Chapter 5, relating to sex discrimination in employment, and
16 enacting a new chapter to read as follows:

17 "CHAPTER 5

18 34-5-1.

19 As used in this chapter, the term:

20 (1) 'Comparable work' means job duties that are substantially similar in that substantially
21 similar skill, effort, and responsibility are required and that are performed under similar
22 working conditions; provided, however, that a job title or job description alone shall not
23 determine comparability.

24 (2) 'Employer' means any person or entity that employs one or more employees and shall
 25 include the state and its political subdivisions.

26 (3) 'Wages' means all forms of remuneration for employment.

27 (4) 'Working conditions' means the environmental and other similar circumstances
 28 customarily taken into consideration in setting salary or wages, including, but not limited
 29 to, reasonable shift differentials, and the physical surroundings and hazards encountered
 30 by employees performing a job.

31 34-5-2.

32 (a) No employer shall discriminate in any way on the basis of gender in the payment of
 33 wages or pay any person in its employ a salary or wage rate less than the rates paid to its
 34 employees of a different gender for comparable work; provided, however, that variations
 35 in wages shall not be prohibited if based upon:

36 (1) A system that rewards seniority with the employer; provided, however, that time
 37 spent on leave due to a pregnancy-related condition and protected parental, family, and
 38 medical leave shall not reduce seniority;

39 (2) A merit system;

40 (3) A system which measures earnings by quantity or quality of production, sales, or
 41 revenue;

42 (4) The geographic location in which a job is performed;

43 (5) Education, training, or experience to the extent such factors are reasonably related
 44 to the particular job in question; or

45 (6) Travel, if the travel is a regular and necessary condition of the particular job.

46 (b) An employer who is paying a wage differential in violation of subsection (a) of this
 47 Code section shall not reduce the wages of any employee solely in order to comply with
 48 such subsection.

49 34-5-3.

50 (a) It shall be an unlawful practice for an employer to:

51 (1) Require, as a condition of employment, that an employee refrain from inquiring
 52 about, discussing, or disclosing information about either the employee's own wages or
 53 about any other employee's wages; provided, however, that nothing in this paragraph
 54 shall obligate an employer to disclose an employee's wages to another employee or a third
 55 party;

56 (2) Seek the wage or salary history of a prospective employee from the prospective
 57 employee or a current or former employer or to require that a prospective employee's
 58 prior wage or salary history meet certain criteria; provided, however, that:

59 (A) If a prospective employee has voluntarily disclosed such information, a prospective
 60 employer may confirm prior wages or salary or permit a prospective employee to
 61 confirm prior wages or salary; and

62 (B) A prospective employer may seek or confirm a prospective employee's wage or
 63 salary history after an offer of employment with compensation has been negotiated and
 64 made to the prospective employee; or

65 (3) Discharge or in any other manner retaliate against any employee because the
 66 employee:

67 (A) Opposes or opposed any act or practice made unlawful by this Code section;

68 (B) Made or indicated an intent to make a complaint or has otherwise caused to be
 69 instituted any proceeding under this Code section;

70 (C) Testified or is about to testify, assist, or participate in any manner in an
 71 investigation or proceeding under this Code section; or

72 (D) Disclosed the employee's wages or has inquired about or discussed the wages of
 73 any other employee.

74 (b) No employer shall contract with an employee to avoid complying with this Code
 75 section or exempt itself by any other means from this Code section; provided, however,
 76 that an employer may prohibit a human resources employee, a supervisor, or any other
 77 employee whose job responsibilities require or allow access to other employees'
 78 compensation information from disclosing such information without prior written consent
 79 from the employee whose information is sought or requested, unless the compensation
 80 information is a public record for purposes of Article 4 of Chapter 18 of Title 50.

81 34-5-4.

82 An employer who violates any provision of this chapter shall be liable to the employee
 83 affected in the amount of the employee's unpaid wages and in an additional equal amount
 84 of liquidated damages. An action to recover such liability may be maintained in any court
 85 of competent jurisdiction by any one or more employees for and on their own behalf or on
 86 behalf of other employees similarly situated. The court shall, in addition to any judgment
 87 awarded to the plaintiff, award reasonable attorneys' fees to be paid by the defendant and
 88 the costs of the action. For any action brought for a violation of paragraph (3) of
 89 subsection (a) of Code Section 34-5-3, the plaintiff may also recover for any damages
 90 incurred.

91 34-5-5.

92 If an employee recovers unpaid wages under Code Section 34-5-4 and also files a
 93 complaint or brings an action under 29 U.S.C. Section 206(d) which results in an additional

94 recovery under federal law for the same violation, the employee shall return to the
95 employer the amounts recovered under Code Section 34-5-4 or the amounts recovered
96 under federal law, whichever is less.

97 34-5-6.

98 The Attorney General may bring an action to collect unpaid wages on behalf of one or
99 more employees and an additional equal amount of liquidated damages, together with the
100 costs of the action and reasonable attorneys' fees. Such costs and attorneys' fees shall be
101 paid to the state. The Attorney General shall not be required to pay any filing fee or other
102 cost in connection with such action.

103 34-5-7.

104 (a) Any agreement between the employer and any employee to work for less than the wage
105 to which the employee is entitled under this chapter shall not be a defense to an action
106 brought under Code Section 34-5-4.

107 (b) An employee's previous wage or salary history shall not be a defense to an action
108 brought under Code Section 34-5-4.

109 34-5-8.

110 (a) An employer against whom an action is brought alleging a violation of Code Section
111 34-5-2 and who, within the previous three years and prior to the commencement of the
112 action, has both completed a self-evaluation of its pay practices in good faith and can
113 demonstrate that reasonable progress has been made toward eliminating wage differentials
114 based on gender for comparable work, if any, in accordance with that evaluation, shall have
115 an affirmative defense to liability under Code Section 34-5-2. For purposes of this Code
116 section, an employer's self-evaluation may be of the employer's own design, so long as it
117 is reasonable in detail and scope in light of the size of the employer, or may be consistent
118 with standard templates or forms issued by the Attorney General.

119 (b) An employer who has completed a self-evaluation in good faith within the previous
120 three years and prior to the commencement of the action and can demonstrate that
121 reasonable progress has been made toward eliminating wage differentials based on gender
122 for comparable work in accordance with that evaluation, but cannot demonstrate that the
123 evaluation was reasonable in detail and scope, shall not be entitled to an affirmative
124 defense but shall not be liable for liquidated damages under this chapter.

125 (c) Evidence of a self-evaluation or remedial steps undertaken in accordance with this
126 Code section shall not be admissible in any proceeding as evidence of a violation of Code
127 Section 34-5-2 that occurred prior to the date the self-evaluation was completed or that

128 occurred either within six months thereafter or within two years thereafter if the employer
129 can demonstrate that it has developed and begun implementing in good faith a plan to
130 address any wage differentials based on gender for comparable work.

131 (d) An employer who has not completed a self-evaluation shall not be subject to any
132 negative or adverse inference as a result of not having completed a self-evaluation.

133 34-5-9.

134 Any action based upon or arising under this chapter shall be instituted within three years
135 after the date of the alleged violation. For the purposes of this Code section, a violation
136 occurs when a discriminatory compensation decision or other practice is adopted, when an
137 employee becomes subject to a discriminatory compensation decision or other practice, or
138 when an employee is affected by application of a discriminatory compensation decision or
139 practice, including each time wages are paid, resulting in whole or in part from such a
140 decision or practice."

141 **SECTION 3.**

142 This Act shall become effective on January 1, 2018.

143 **SECTION 4.**

144 All laws and parts of laws in conflict with this Act are repealed.