

## Act 31, An Act Relating to Equal Pay

Signed by Governor Shumlin on May 14, 2013, Act 31 amends Vermont's nondiscrimination laws to target pay inequity, expand protections against retaliation, assist businesses and employees to strike an appropriate work / family balance, and provide consistent legal protections. Most of Act 31 goes into effect July 1, 2013. The provision regarding flexible work arrangements (described below) goes into effect January 1, 2014. A copy of Act 31 is available at <http://www.leg.state.vt.us/docs/2014/Acts/ACT031.pdf>.

Key features of Act 31 include:

### Clarifying Vermont's Unequal Pay Law

Vermont law currently states that employers may defend an equal pay claim by showing that the pay disparity is based upon "any factor other than sex." This is the same language used by the federal Equal Pay Act (EPA), which also applies to Vermont employers. Act 31 amends Vermont law to make it consistent with Second Circuit case law interpreting the EPA, and thus leaves Vermonters with a single, consistent standard. Under the law, employers seeking to use this defense must show that the difference in wages arises from a bona fide factor other than sex that does not perpetuate a sex-based differential in compensation, is job-related with respect to the position in question, and is based upon legitimate business considerations.

### Equal Pay Certification By State Contractors

Act 31 requires State contractors to certify that they are in compliance with Vermont's equal pay law and to make their records available for review by the State to ensure compliance. This provision of the Act does not require the filing of any statistical reports of the sort often required of federal contractors.

### Flexible Working Arrangements: "Right To Ask, Duty to Consider"

In passing Act 31, the Legislature found that wage disparities may also arise because employees opt to take lower-paying jobs they perceive to offer a better work / family balance. Increasing numbers of Vermont employers recognize that family-friendly workplaces result in higher productivity and increased employee loyalty. Nevertheless, many employees are simply afraid to ask for flexible arrangements because they fear they will be viewed as disloyal or less valuable than those without family needs.

Act 31 addresses these concerns by giving all employees the "right to ask" for flexible workplace arrangements without fear of retaliation. It also creates for employers a "duty to consider" and discuss such requests in good faith – up to twice a year for each employee. The Act leaves employers with full discretion to grant or deny

such requests according to their business needs. However, they cannot punish employees who seek such arrangements or ignore such requests altogether. An employee has no private right of action to challenge the employer's decision unless it is otherwise unlawful. However, the State or the Human Rights Commission (for employees of the State) may take administrative or court action if the employer refuses to engage in this good faith process or retaliates against an employee.

This provision of Act 31 goes into effect January 1, 2014.

### Consistent Protections Against Retaliation And Consistent Remedies in Employment, Public Accommodations and Housing

Over the years, individual changes to Vermont's fair employment laws — such as those related to parental leave or nursing mothers at work — have resulted in inconsistencies regarding when employees are protected from unlawful retaliation and what remedies they may seek. Act 31 eliminates the inconsistencies by incorporating the protections and remedies set forth in Vermont's nondiscrimination statute, the Fair Employment Practices Act (FEPA), into other employment provisions.

In addition Act 31 amends the FEPA standard to make clear that employees who oppose unlawful employment practices are protected from retaliation.

Using the same retaliation standard, the Act also amends laws to protect individuals who oppose unlawful discrimination in public accommodations and housing.

### Paid Family Leave Study Committee

Finally, the Act establishes a legislative study committee, chaired by the Commissioner of Labor, to consider the feasibility of a paid family leave system funded by employee payroll deductions. Such systems have existed in California since 2004 and in New Jersey since 2008. The committee's report is due January 15, 2014.