

2013 New Mexico Statutes

Chapter 28 - Human Rights

Article 23 - Fair Pay for Women

28-23-1. Short title. (2013)

This act [28-23-1 to 28-23-6 NMSA 1978] may be cited as the "Fair Pay for Women Act".

History: Laws 2013, ch. 12, § 1.

28-23-2. Definitions. (2013)

As used in the Fair Pay for Women Act:

- A. "commission" means the human rights commission;
- B. "director" means the chief of the human rights bureau of the labor relations division of the workforce solutions department;
- C. "employ" means suffer or permit to work;
- D. "employee" means any individual employed by an employer;
- E. "employer" means a person employing four or more employees and any person acting for an employer;
- F. "unpaid wage" means the difference between the wages paid to the employee and the wages that would have been paid to the employee had the discrimination not occurred; and
- G. "wage" means compensation for performance of services by an employee for an employer whether paid by the employer or another person, including cash value of all compensation paid in any medium other than cash.

History: Laws 2013, ch. 12, § 2.

28-23-3. Prohibition on paying employees less for same work. (2013)

A. No employer shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in the establishment at a rate less than the rate that the employer pays wages to employees of the opposite sex in the establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility and that are performed under similar working conditions, except where the payment is made pursuant to a:

- (1) seniority system;
- (2) merit system; or
- (3) system that measures earnings by quantity or quality of production.

B. An employer shall not reduce the wage of an employee to comply with this section.

C. No agreement between an employer and an employee for a specific wage in violation of the Fair Pay for Women Act shall prevent the employee from raising a claim based on a violation of the Fair Pay for Women Act.

History: Laws 2013, ch. 12, § 3.

28-23-4. Grievance procedure. (2013)

A. A person claiming to be aggrieved by an unlawful discriminatory practice in violation of the Fair Pay for Women Act may:

- (1) maintain an action to establish liability and recover damages and injunctive relief in any court of competent jurisdiction by any one or more employees on behalf of the employee or employees or on behalf of other employees similarly situated; or
- (2) seek relief under the Human Rights Act [Chapter 28, Article 1 NMSA 1978] pursuant to the process set out in Sections 28-1-10 through 28-1-13 NMSA 1978.

B. The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this section, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

C. The court in any action brought under this section may order appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employer.

D. An action arising under the Fair Pay for Women Act shall be brought no later than two years from the last date of the employee's employment.

E. A person claiming to be aggrieved by an unlawful discriminatory practice in violation of the Fair Pay for Women Act need not exhaust state administrative remedies.

F. The initiation of an administrative process under the Human Rights Act pursuant to the process set out in Sections 28-1-10 through 28-1-13 NMSA 1978 shall toll the statute of limitations for initiating a claim under the Fair Pay for Women Act.

History: Laws 2013, ch. 12, § 4.

28-23-5. Retaliation prohibited. (2013)

It is a violation of the Fair Pay for Women Act for an employer or any other person to discharge, demote, deny promotion to or in any other way discriminate against an employee in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to the Fair Pay for Women Act or assisting another person to do so, or for informing another person about employment rights or other rights provided by law.

History: Laws 2013, ch. 12, § 5.

28-23-6. Enforcement; penalties; remedies. (2013)

A. An employer who violates a provision of the Fair Pay for Women Act shall be liable to the affected employee for damages and equitable relief, including employment, reinstatement and promotion. Damages shall be calculated on the basis of:

- (1) the affected employee's unpaid wages and the damages from retaliation;
- (2) all other actual damages; and
- (3) treble damages.

B. The court may, in its sound discretion, not award treble damages or award any amount thereof not to exceed the amount specified in this section if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that the employer's act or omission was not a violation of the Fair Pay for Women Act.

C. An employer who violates a provision of the Fair Pay for Women Act may also be liable to the employee for punitive damages.

D. Recovery of unpaid wages is limited to six years prior to the date of the last violation of the Fair Pay for Women Act.

History: Laws 2013, ch. 12, § 6.